



Yukon
Information
and Privacy
Commissioner

INVESTIGATION REPORT

**Pursuant to sections 90 and 101 of the
*Access to Information and Protection of Privacy Act (ATIPPA)***

**Department of Highways and Public Works
File ATP-ADJ-2022-02-045**

**Rick Smith, Adjudicator
Office of the Information and Privacy Commissioner
June 22, 2022**

Summary

The Complainant made an Access Request to the Department of Highways and Public Works (HPW) for vehicle collision records in the Yukon for the period October 16, 2016, to September 24, 2021, and wanted them provided as per 15 data fields: ACCIDENT_CASE_ID, ACCIDENT_TYPE_DESC, PRIMARY_ACCIDENT_DESC, ACCIDENT_DATE, TOTAL_VEHICLES, POLICE_ATTEND_IND, ACCIDENT_CITY, ACCIDENT_LOCATION, VEHICLE_COLOUR_CODE, TRAVEL_DIRECTION, ESTIMATE_VEHICLE_DAMAGE, INSURANCE_COMPANY, VIN, VEHICLE_NUMBER, and IMPACT_LOCATION.

HPW provided the Complainant, through the ATIPPA Office Access and Privacy Officer, 774 pages of responsive records. Of that total, HPW severed all information on pages 1-645 citing subsection 70 (1) as its authority for taking this action.

In response, the Complainant made a complaint under section 66 of ATIPPA, stating that HPW withheld access to information that it was not authorised to withhold, and that HPW provided the unredacted and redacted records in a format that made the data difficult to comprehend.

The adjudicator examined two issues. Firstly, was HPW required to sever responsive information in accordance with subsection 70 (1)? Secondly, did HPW make reasonable efforts to respond to the Access Request in an open, accurate and complete manner, in accordance with subsection 64 (5)?

After an examination of the evidence and HPW's submissions, noting that the Complainant made no submissions beyond the initial complaint, the adjudicator made three findings. Firstly, the redacted records were not subject to the *Motor Vehicles Act* but were nonetheless subject to ATIPPA. Secondly, HPW was not required to withhold from the Complainant the information redacted from the responsive records under subsection 70 (1) of ATIPPA. Thirdly, HPW failed in its duty to assist because it did not communicate with the Complainant about an appropriate format nor provide them with a copy of the responsive records in an electronic format ordinarily held by the Department and capable of re-use.

The adjudicator then made two recommendations. Firstly, HPW should disclose the redacted Records in their entirety to the Complainant. Secondly, HPW should disclose the unredacted and redacted Records to the Complainant in their original format or another format that is capable of re-use by the Complainant in accordance with the applicable provisions in section 65.

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Interpretation Act, RSY 2002, c.125

Cases and Orders Cited

Cases

Rizzo & Rizzo Shoes (Re), 1998 CanLII 837 (SCC)

MacDonald Communities Limited v. Alberta Utilities Commission, 2019 ABCA 353 (Can LII)

Leon's Furniture Limited v. Alberta (Information and Privacy Commissioner), 2011 ABCA 94 (CanLII)

Orders

Order P-16, Ontario Information and Privacy Commissioner <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/128027/index.do>

Order F2015-17, Alberta Information and Privacy Commissioner, 2015 CanLII 57424 (AB OIPC)

Order PO-2410, Ontario Information and Privacy Commissioner <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/132387/index.do?q=VINs>

Inquiry Report ATP15-055AR, Yukon Information and Privacy Commissioner
[https://www.yukonombudsman.ca/uploads/media/57b374ca39f97/Final%20Inquiry%20Report%2016Jun08 Redacted.pdf?v1](https://www.yukonombudsman.ca/uploads/media/57b374ca39f97/Final%20Inquiry%20Report%2016Jun08%20Redacted.pdf?v1)

Order No. FI-16-005, Prince Edward Island Information and Privacy Commissioner
<https://www.canlii.org/en/pe/peipc/doc/2016/2016canlii48837/2016canlii48837.pdf>

Review Report 181-2020, Saskatchewan Information and Privacy Commissioner
<https://www.canlii.org/en/sk/skipc/doc/2022/2022canlii37556/2022canlii37556.pdf>

Explanatory Note

All sections, subsections, paragraphs and the like referred to in this investigation report (Investigation Report) are to the *Access to Information and Protection of Privacy Act* (ATIPPA),¹ unless otherwise stated.

¹SY 2018, c.9, as amended.

I BACKGROUND

[1] On September 24, 2021, the access to records applicant (Complainant) requested the following information from the Department of Highways and Public Works (Department).²

Vehicle collision records in Yukon. We requested this data back in 2016 (prior request # A-6475). And we'd like *[sic]* request *[sic]* updated data from Oct. 16, 2016.³

Data fields could include the following:⁴

- 1) ACCIDENT_CASE_ID
- 2) ACCIDENT_TYPE_DESC
- 3) PRIMARY_ACCIDENT_DESC
- 4) ACCIDENT_DATE
- 5) TOTAL_VEHICLES
- 6) POLICE_ATTEND_IND
- 7) ACCIDENT_CITY
- 8) ACCIDENT_LOCATION
- 9) VEHICLE_COLOUR_CODE
- 10) TRAVEL_DIRECTION
- 11) ESTIMATE_VEHICLE_DAMAGE
- 12) INSURANCE_COMPANY
- 13) VIN
- 14) VEHICLE_NUMBER
- 15) IMPACT_LOCATION

(collectively, Access Request)

²The Complainant indicated on the 'Request for Access to Records' form (Access Form) that the request was for information other than their own personal information.

³The Complainant indicated on the Access Form that the date range was from October 16, 2016, to the 'Present'. Given the signed date on the Access Form, this would be up to and including September 24, 2021. However, an email dated September 27, 2021 @ 1028 hours from the ATIPPA Coordinator to the ATIPP Office stated that the time frame was from October 16, 2016 to September 27, 2021. Since this particular reference is not found on the Access Form and the ATIPPA Coordinator did not provide any reason for the discrepancy, this Investigation Report will use the time frame October 16, 2016, to September 24, 2021, unless otherwise stated.

⁴For purposes of clarity, this Investigation Report will break the requested data types into separate lines and number them accordingly (Data Fields).

[2] On October 15, 2021, an Access and Privacy Analyst in the Department issued an 'Access Information Summary' that stated, amongst other things, the following.⁵

ATIPP File #: 21-310

Motor Vehicles branch

...

IMPORTANT: Motor Vehicles conducted a consult with Yukon Bureau of Statistics and received a legal opinion on release of this information. Yukon is a small jurisdiction and most or all of the information would be considered personal information and would not be released as per section 70 of the ATIPP Act. Based on legal opinions, etc., the only variables that we would provide are:

Accident date – year only

Estimate vehicle damage – it should read that these figures are estimations and that the majority of collisions merely have the \$1000.00 reporting threshold recorded. Any figures recorded in this field outside of the \$1000.00 amount are not verified.

Impact location

Primary accident description

[3] Also on October 15, 2021, the Access and Privacy Manager⁶ in the ATIPP Office sent an 'Estimate of Cost' letter to the Complainant quoting, amongst other things, the identical information set out above in the Access Information Summary.⁷ Additionally, they attached this document and added that they were providing it to "assist you when working with the [ATIPP] Office to narrow the scope of your request if you desire to reduce fees."⁸ They also issued information on how to approve the 'Estimate of Cost' and arrange payment.

[4] On October 19, 2021, the ATIPPA Coordinator in the ATIPP Office emailed the Complainant advising that the ATIPP Office had received the signed Estimate of Cost, inclusive

⁵ This Investigation Report will use the titles of the individuals at the time of their respective involvement, unless otherwise stated.

⁶ The person responsible for providing an estimate of cost under ATIPPA is the Access and Privacy Officer. I will assume for the purposes of this Investigation Report that any reference to an 'Access and Privacy Manager' in the documents provided by the Department means the Access and Privacy Officer.

⁷ The ATIPPA Office, although resident in the Department, is responsible for coordinating all access requests for all public bodies.

⁸ Estimate of Cost letter at 2.

of a deposit payment, and that the Complainant should receive a response by November 18, 2021.⁹

[5] Also on October 19, 2021, the ATIPPA Coordinator emailed the ATIPP Office advising, amongst other things, that the Complainant had approved the Estimate of Cost and that the response due date was November 16, 2021.¹⁰

[6] On November 17, 2021, the ATIPPA Coordinator advised the Complainant that some records responsive to the Access Request were being withheld by the Department Head pursuant to subsection 70 (1). They also advised that the Department was providing one record consisting of a 774-page document.

II INVESTIGATIVE PROCESS

[7] On December 6, 2021, the Information and Privacy Commissioner (IPC) received a complaint from the Complainant pursuant to section 66 in respect of the Department's response to the Access Request. It stated that the Complainant believed that (1) the Department withheld access to information that it was not authorised to withhold, and (2) the format in which the records were provided made the data difficult to comprehend.

[8] On February 4, 2022, informal resolution attempts concluded, and the matter was referred to formal investigation.

[9] On February 10, 2022, the IPC initiated a formal investigation and issued a written Notice of Investigation to the parties (Investigation).

[10] Also on February 10, 2022, the IPC issued to the Minister of Highways and Public Works (Department Head) a Notice to Produce Records requesting a complete copy of all records identified as responsive to the Access Request, inclusive of a schedule of records.

[11] On March 14, 2022, Yukon government legal counsel for the Department provided the IPC with a package that contained Department submissions, cases considered, a copy of Part 6 of the *Motor Vehicles Act*, and statutory declarations from both the Director of the Yukon Bureau of Statistics and the acting Manager of Corporate Information Management for the ATIPP Office.

⁹ Email October 19, 2021 @ 1142 hours from the ATIPPA Coordinator to the Complainant. An earlier email, October 18, 2021 @ 1320 hours, from the ATIPPA Coordinator to the Complainant, advised that once the ATIPP Office had received proof of payment, it would provide the 'records' to them. This Investigative Report will therefore treat the term 'response' in this context as equating to 'records'.

¹⁰ Email October 19, 2021 @ 1143 hours from the ATIPP Office to Megan Andison.

[12] Also on March 14, 2022, the IPC provided the Complainant with the Department's submissions and advised that reply submissions were due to the IPC on or before March 21, 2022.

[13] Later that same day, the Complainant advised the IPC that they did not intend to provide reply submissions.

III ISSUES

[14] There are two issues for this investigation. They are as follows.

- 1) Was the Department Head required to sever responsive information, in accordance with subsection 70 (1)?
- 2) Did the Department Head make reasonable efforts to respond to the Access Request in an open, accurate and complete manner, in accordance with subsection 64 (5)?

IV RECORDS AT ISSUE

[15] The 774 PDF-formatted pages responsive to the Access Request relate to the following.¹¹

Pages 1-129.

These pages are grouped under the headings ACCIDENT_CASE_ID and ACCIDENT_TYPE_DESC. These headings comprise Data Fields 1 and 2.¹²

All the information on pages 1-129 is redacted except for the headings.

Pages 130-258

These pages are grouped under the headings PRIMARY_ACCIDENT_DESC; ACCIDENT_DATE; TOTAL_VEHICLES and POLICE_ATTEND_IND. These headings comprise Data Fields 3 to 6. They also contain a lengthy series of entries that comprise the following typical examples, running from 2016 to 2021.

¹¹ For purposes of clarity, this Investigation Report has segmented and bolded (as applicable) the various pages at issue. If they were pieced together as a spreadsheet, then the 15 headings would appear along a horizontal axis with the respective data under each heading appearing on a vertical axis. That said, I will refer to the headings and data as they appear in the above page-specific PDF format as provided by the Department to the Complainant.

¹² *Supra*, note 4.

SIDE SWIPE	2016	[X]	[X]
REAR END	2016	[X]	[X]
INTERSECTION	2016	[X]	[X]
FIXED OBJECT	2016	[X]	[X]
OFF ROAD LEFT	2016	[X]	[X]
OFF ROAD RIGHT	2016	[X]	[X]
UNKNOWN	2016	[X]	[X]
PARKING	2016	[X]	[X]
LEFT TURN	2016	[X]	[X]
RIGHT TURN	2016	[X]	[X]
OTHER	2016	[X]	[X]
BACKING	2016	[X]	[X]
OVERTAKING	2016	[X]	[X]
HEAD ON	2016	[X]	[X]
[Blank]	2021	[X]	[X] ¹³

All the information under the heading portions TOTAL_VEHICLES and POLICE_ATTEND_IND on pages 130-258 is redacted.¹⁴

Pages 259-387

These pages are grouped under the headings ACCIDENT_CITY; ACCIDENT_LOCATION; and VEHICLE_COLOUR_CODE. These headings comprise Data Fields 7 to 9.

All the information on pages 259-387 is redacted except for the headings.

Pages 388-516

These pages are grouped under the headings TRAVEL_DIRECTION and ESTIMATE_VEHICLE_DAMAGE. These headings comprise Data Fields 10 and 11. They also contain a lengthy series of entries that comprise the following typical examples.

[X] 0¹⁵

All the information under the heading TRAVEL_DIRECTION on pages 388-516 is redacted.¹⁶

¹³ There are a small number of entries from 2016 to 2021 that do not record the accident description.

¹⁴ This Investigation Report has entered [X] to illustrate the area of redaction in each line.

¹⁵ Or a particular dollar amount.

¹⁶ *Supra*, note 14.

Pages 517-645

These pages are grouped under the headings INSURANCE_COMPANY and VIN.¹⁷ These headings comprise Data Fields 12 And 13.

All the information on pages 517-645 is redacted except for the headings.

Pages 646-774

These pages are grouped under the headings VEHICLE_NUMBER and IMPACT_LOCATION. These headings comprise Data Fields 14 and 15. They also contain a lengthy series of entries that comprise the following typical examples.¹⁸

2	FRONT INCLUDING ENGINE HOOD & WINDSHIELD
2	RIGHT FRONT THIRD OF VEHICLE
1	RIGHT MIDDLE THIRD OF VEHICLE
2	RIGHT REAR THIRD OF VEHICLE
1	ENTIRE RIGHT SIDE
1	LEFT FRONT THIRD OF VEHICLE
1	LEFT MIDDLE THIRD OF VEHICLE
1	LEFT REAR THIRD OF VEHICLE
1	ENTIRE LEFT SIDE
1	REAR INCLUDING TRUNK
1	ROOF
1	UNDERCARRIAGE
1	UNKNOWN
2	NO APPARENT DAMAGE
2	OTHER ¹⁹
2	[Blank] ²⁰

The information on pages 646-774 has not been redacted.

(Collectively, the responsive Records)

[16] For reference convenience below, this Investigation Report will group the various data field headings in pages 1 to 774 as follows.

¹⁷ A VIN means a vehicle identification number.

¹⁸ These entries appear in the responsive Records in random order.

¹⁹ There is no elaboration for this type of entry.

²⁰ There are a small number of entries that provide the number of vehicles but not the impact location.

- 1) ACCIDENT_CASE_ID
- 2) ACCIDENT_TYPE_DESC
- 3) PRIMARY_ACCIDENT_DESC
- 4) ACCIDENT_DATE
- 5) TOTAL_VEHICLES
- 6) POLICE_ATTEND_IND
- 7) ACCIDENT_CITY
- 8) ACCIDENT_LOCATION
- 9) VEHICLE_COLOUR_CODE
- 10) TRAVEL_DIRECTION
- 11) ESTIMATE_VEHICLE_DAMAGE
- 12) INSURANCE_COMPANY
- 13) VIN
- 14) VEHICLE_NUMBER
- 15) IMPACT_LOCATION

[17] Given the above, the records at issue are the ones redacted on pages 1-645 (redacted Records). It is noted, however, that the Department Head partially provided records responsive to the Access Request. These Records, found on pages 646-774 under Data Field 14, VEHICLE_NUMBER, and Data Field 15, IMPACT_LOCATION, are not in contention between the parties for purposes of this Investigation and I have not reviewed them.

V JURISDICTION

[18] My authority to investigate the Department Head's decision to refuse to provide the Applicant with the Records or withhold information from a record is set out in subsections 91 (1) and (2).

VI BURDEN OF PROOF

[19] Paragraph 102 (c) sets out the burden of proof relevant to the first issue in this Investigation. It states that the burden is on the Department Head to prove that a complainant has no right to the records or to the information withheld from the records.

102 (c) in the case of a complaint made under section 66 that relates to a determination or decision to withhold information or a record under paragraph 64 (1)(b), the head who made the determination or decision has the burden of proof of proving that the complainant has no right of access under this Act to the information or record.

[20] There is, however, no burden of proof relevant to the second issue in this Investigation. The Department Head, who has a duty to assist an applicant in an open, accurate and complete manner, is in the best position to demonstrate their compliance with this duty. Therefore, it is my view that that is it up to the Department Head to establish, on balance, that they have met the requirements of subsection 64 (5).

VII SUBMISSIONS OF THE PARTIES

[21] The submissions of the Department Head are addressed in the issues as they are applicable thereto.

VIII Preliminary Issue

[22] The Department indicated in its submissions that paragraph 98 (1)(a) of the *Motor Vehicles Act* [MVA] prohibits the Department from disclosing a “written report or statement made or furnished under [Part 6 Accident Reports].” This provision states as follows.

98 Inspection of accident report

(1) Subject to subsection (2), a written report or statement made or furnished under this Part

(a) is not open to public inspection...

[23] Subsection 98 (3) states that “[t]his section applies despite the *Access to Information and Protection of Privacy Act*.”

[24] While the response provided to the Complainant did not cite this provision as a reason for withholding any of the information that is subject to the Complainant’s Access Request, if paragraph 98 (1)(a) applies to any of the information requested by the Complainant in their Access Request, then ATIPPA may not apply to it and, consequently, the Complainant may not have any right of access to the information. Given this, I must determine whether this provision applies to any of the information withheld from the Complainant.

The Department’s MVA Assertion

[25] The Department submitted that all the information requested by the Complainant in their Access Request is restricted under section 98 of the MVA.

[26] It reasoned as follows. Under Part 6 ‘Accident Reports’ of the MVA, section 95 requires a driver involved in an accident that results in injury or death to a person, or in property damage

to an apparent extent of \$1000 or more, to make a written report to a peace officer. Section 96 requires a peace officer who witnessed or investigated the accident to make a written report of the accident to the Registrar. Section 97 allows the Registrar to seek additional information from the driver or peace officer involved. Section 98 governs the written report or statement.

[27] As indicated, paragraph 98 (1)(a) of the MVA states that a written report or statement furnished under Part 6 is not open to public inspection.

[28] Subsection 98 (2) of the MVA provides a limited exception that applies to a person or an insurance company that has paid or may be liable to pay for damages; or recovers or may be entitled to recover damages resulting from an accident in which a motor vehicle is involved. As such, they are allowed, including their lawyer, agent or other representative, to receive from the Registrar information that may be contained in the written report or statement under sections 95-97 in respect of the list set out in paragraphs 98 (2) (a-j). Recall that this list includes, for example, various types of motor vehicle data, such as the date, time and place of the accident, and the names and addresses of any parties involved that must be included in a written report.

[29] Notwithstanding the Department's assertion concerning paragraph 98 (1)(a) of the MVA, the Complainant is not looking to access a written report or statement about an accident. They are looking, vis-à-vis their Access Request, to access redacted vehicle collision records in the Yukon for a specified period that are included, as previously mentioned, within the following data fields.²¹

- 1) ACCIDENT_CASE_ID
- 2) ACCIDENT_TYPE_DESC
- 3) PRIMARY_ACCIDENT_DESC
- 4) ACCIDENT_DATE
- 5) TOTAL_VEHICLES
- 6) POLICE_ATTEND_IND
- 7) ACCIDENT_CITY
- 8) ACCIDENT_LOCATION
- 9) VEHICLE_COLOUR_CODE
- 10) TRAVEL_DIRECTION
- 11) ESTIMATE_VEHICLE_DAMAGE
- 12) INSURANCE_COMPANY

²¹ Recall that the last two data fields [14] VEHICLE_NUMBER and [15] IMPACT_LOCATION were not redacted and are not at issue.

13) VIN

[30] None of these data fields nor the redacted Records within, as provided to the Complainant, constitute a written report of an accident as contemplated by sections 95-98 of the MVA.

[31] It may be that Data Field 1, ACCIDENT_CASE_ID, might correlate to a particular written report but, on its own, a case file number would not offend paragraph 98 (1)(a) of the MVA because it is the written report itself that, subject to a limited exception, is not open to public inspection. Similarly, Data Field 12, INSURANCE_COMPANY, might correlate to a particular written report but, on its own, the name of an insurance company would not offend that paragraph.

[32] In short, a written report under the MVA is composed of a non-exhaustive list of information that a driver, under certain circumstances, must provide to a peace officer who, under certain circumstances, must in turn provide to the Registrar, who also has authority to seek additional information from either one involved. This information, as provided, is the written report.

[33] However, the information comprising a written report is not the same as the data collected, used and potentially disclosed by the Department under the respective data fields as set out in the Access Request. The evidence shows that the responsive Records appear to be some form of aggregate data that may derive in some fashion from a collection of written reports and may use some terms common to a written report, such as an insurance company name or a VIN, but this aggregate data is not the specific information in a written report provided to the Registrar as the result of a particular accident.

Finding – Preliminary Issue

[34] For the foregoing reasons, I find that the information withheld from pages 1 to 645 are not subject to paragraph 98 (1)(a) of the MVA and that ATIPPA applies to this information.

IX Main Issues

Issue 1 – Was the Department Head required to sever responsive information in accordance with subsection 70 (1)?

Relevant Law

[35] One of the purposes of ATIPPA is set out in paragraph 6 (a) as follows.

6 The purposes of this Act are

(a) to protect the privacy of individuals by controlling and limiting the collection, use and disclosure of personal information by public bodies; ...

[36] 'Personal Information' is defined in section 1 as meaning the following.

...subject to section 3,^[22] recorded information about an identifiable individual, including

(a) their name,

(b) their home, mailing or email address or phone number,

(c) their age, sex, gender identity or expression, or sexual orientation,

(d) their skin colour, fingerprints, blood type or any other genetic characteristic or biometric information,

(e) their race, ethnicity or nationality,

(f) information about their current and past physical or mental health, including their personal health information,

(g) information about their marital, family, education or employment status or history,

(h) information about their current or past

(i) political or religious beliefs, associations or activities,

(ii) amounts or sources of income, or

(iii) income tax returns,

(i) information about

(i) an asset that they wholly or partially own or owned,

(ii) a liability for which they are or were wholly or partially liable,

(iii) a transaction or banking activity in which they are or were involved,

²² Section 3 sets out three exceptions to personal information. They are an individual's business contact information, the terms of a contract between a service provider and a public body, and any type of personal information prescribed not to be personal information.

- (iv) an assessment of credit-worthiness of which they are or were the subject,*
- (v) a discretionary benefit in the nature of income assistance, legal aid or another similar type of benefit that they are receiving or have received, or*
- (vi) a law enforcement matter of which they are or were the subject,*
- (j) a personal unique identifier that has been assigned to them,*
- (k) another individual's opinion or view about them, or*
- (l) their opinion or view about something other than their opinion or view about another individual; ...*

[37] Subsection 70 (1) is found in Division 8 'Information to which access is prohibited' and states as follows.

70 (1) The head of a responsive public body must not grant an applicant access to a third party's personal information held by the responsive public body if the head determines, in accordance with this section, that disclosure of the information would be an unreasonable invasion of the third party's privacy.

The Department's Submissions

[38] The Department provided written submissions to support the Department Head's decision concerning the redacted Records.²³

[39] The Department submitted that it had consulted with the Director of the Yukon Bureau of Statistics (YBS-Director) concerning the data within the redacted Records. Amongst other things, he stated as follows.²⁴

We [Yukon Bureau of Statistics] do not publish or otherwise share confidential information that makes it possible to identify an individual or a business in any manner,

²³This included, amongst other things, a Statutory Declaration by Scott Tyrner, acting Manager of Corporate Information Management, ATIPP Office, containing, amongst other things, a copy of the Access Request, the Access Information Summary, the Estimate of Costs, and associated email exchanges involving the Complainant and the ATIPP Office between September 27, 2021, to November 17, 2021.

²⁴The Department's submissions at 2. Also, the Statutory Declaration of Bishnu Saha, YBS-Director, March 10, 2022, attached to the submissions.

directly or indirectly. In accordance with our confidentiality management practices, the data in the file are not releasable because of the following reasons:²⁵

1) High risk of indirect identification of a person or persons:

The number of accidents in a given year is very small for Yukon communities and neighbourhoods with [sic] small population base. There is a very high risk of indirect identification as non-personal data (i.e., accident city and location, date and time, along with detailed vehicle information in the VIN) can be combined with other relevant information (e.g., news, social media posts, other forms of communications, etc.) to identify a person or persons involved in the accident. Also, this may lead to an indirect disclosure of the cause of death or injury which is highly sensitive confidential information.

[40] The Department further stated in its submissions that, as “per the elements listed above, the [Department Head] considered and weighed the factors and circumstances and determined the requested access is an unreasonable invasion of a third party’s privacy and only partial records would be released in response to the [Access Request].”²⁶

[41] It also quoted subsection 70 (1) of ATIPPA but did not make any submissions about why this provision applies. In addition, the Department set out a list of 10 court cases and IPC decisions but made no representations in respect of them.²⁷ Despite this, subsection 70 (1) is a mandatory prohibition to the disclosure of personal information where disclosure would be an unreasonable invasion of a third party’s privacy. As such, I must consider whether this provision applies to any of the information withheld from the Complainant in the redacted Records.

Analysis

[42] The modern principle of statutory interpretation requires that an initial impression left by the ordinary meaning of a provision must be assessed in the context of other provisions of the Act and the Act’s overall scheme. This analysis considers how the provisions or parts of ATIPPA work together to form a functioning and coherent whole that is rationally and internally consistent.²⁸

²⁵ Following the two reasons, he concluded by stating “I suggest that you obtain a legal opinion from Justice before deciding on this request.”

²⁶ The Department’s submissions at 2.

²⁷ The list of cases followed the Department’s submissions on both Issues 1 and 2 but offered no information as to which of the issues they apply to. As such, I refer to the list at this juncture only to acknowledge it.

²⁸ *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at para. 21 and *MacDonald Communities Limited v. Alberta Utilities Commission*, 2019 ABCA 353 (Can LII).

[43] Further, the *Interpretation Act* states “[e]very enactment and every provision thereof shall be deemed remedial and shall be given the fair, large, and liberal interpretation that best ensures the attainment of its objects.”²⁹

[44] In a society in which data about an individual has, for example, an ever-increasing market value, the importance that such an individual places on their ability to maintain privacy and confidentiality in their activities, both common and extraordinary, is more evident when it comes to knowing what information is being collected by a public body and to whom it is being disclosed. As such, personal privacy is an important societal tenet, one that the Yukon Legislature has decided to protect through ATIPPA by regulating and restricting the collection, use and disclosure of personal information by a public body.³⁰

[45] The Department’s submissions in respect of Issue 1 consist of a summary of assertions and the YBS-Director’s consultation.

YBS-Director Statements

[46] The Department based its authority for severing the responsive information that yielded the redacted Records on statements made by the YBS-Director.³¹

1) High risk of indirect identification of a person(s)

[47] The YBS-Director’s concern stemmed from the possibility that non-personal data could be combined with other relevant information to identify an individual involved in an accident. Moreover, it could lead to the indirect disclosure of the cause of death or injury, something he characterised as highly sensitive information. He considered ‘non-personal data’ to be ‘accident city and location’, ‘date and time’, and ‘detailed vehicle information in the VIN’. He also considered ‘other relevant information’ to be such things as ‘news’, ‘social media posts’, and ‘other forms of communications’ but did not elaborate on the latter.

[48] He founded this belief on the premise that both the Yukon population base in a community or neighbourhood and the number of accidents in a typical year are very small.

²⁹ *Interpretation Act*, RSY 2002, c.125 at section 10.

³⁰ Paragraph 6 (a).

³¹ *Supra*, note 24.

Personal Information

[49] Personal information is defined as “recorded information about an identifiable individual, ...”³²

[50] An ‘individual’ is not defined in ATIPPA but case law on this term is informative.

[51] The Ontario Information and Privacy Commissioner, in Order P-16,³³ looked at whether a public body had the requisite authority to withhold records in response to an access request. In doing so, it examined the term ‘individual’, as found in the Ontario *Freedom of Information and Protection of Privacy Act* (FOIP), which defined ‘personal information’ as meaning “recorded information about an identifiable individual, including, ...” [Emphasis in the original] and stated the following.³⁴

*The use of the term “individual” in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended “identifiable individual” to include a sole proprietorship, partnership, unincorporated associations or corporation, it could and would have used the appropriate language to make this clear. The types of information enumerated under subsection 2(1) of the Act as “personal information” when read in their entirety, lend further support to my conclusion that the term “personal information” relates only to natural persons.*³⁵

[52] The Alberta Information and Privacy Commissioner, in Order F2015-17,³⁶ looked at whether a public body had collected and disclosed personal information of an individual without the requisite authority. In doing so, it quoted with favour Order F2010-009 in which the Adjudicator stated the following.³⁷

...information about farming operations included the names of individuals who owned or managed the operations. In Order F2010-009, the Adjudicator stated (at paras. 15 and 16):

On my review of all the alleged disclosures by the Public Body, as just set out, I find that the Public Body did not disclose the Complainant’s personal information. Under section

³² Section 1.

³³ <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/128027/index.do>.

³⁴ *Ibid.* at 17.

³⁵ ‘Personal information’, as defined in section 1 of ATIPPA, has essentially the same types of information in paragraphs (a-l) as the types of information referred to in FOIP subsection 2 (1).

³⁶ 2015 CanLII 57424 (AB OIPC).

³⁷ *Ibid.* at para. 11.

1(n), “personal information” is recorded information about an identifiable individual, which means a human being (Order 96-019 at para. 67) acting in his or her natural capacity (Order F2002-006 at para. 92). [Emphasis mine].

[53] What makes the information ‘personal’ is the term ‘about an identifiable individual’, which has two elements.

[54] First, the individual must be ‘identifiable’. This means that the information must have a precise nexus to that individual in that it must reasonably be capable of identifying the individual directly, such as naming them, or indirectly, such as combining it with other sources of information or drawing an accurate conclusion from the context of the information in a record. Common, broad or statistical information would not apply because such data would require complex, extensive or costly actions to identify someone. Speculative, anecdotal or subjective information would also not apply because such data would require the concurrence of sound, objective and conclusive identifying evidence.

[55] Second, the personal information must relate specifically to that individual. Information that relates to things, possessions or legally artificial persons are not included because the definition is only about an individual.

[56] These two elements were addressed in the following 2011 appeal court case.

[57] The Alberta Court of Appeal case *Leon’s Furniture Limited v. Alberta (Information and Privacy Commissioner)*³⁸ (*Leon’s*), looked at whether it was reasonable for the Alberta Information and Privacy Commissioner (AB-IPC) to prohibit the appellant furniture company from collecting driver’s licence numbers and licence plate numbers when the customer, or someone on their behalf, picked up the order. The appellant’s collection policy existed to deter and prevent fraud, as well as to detect it.³⁹

[58] The Court examined the definition of ‘personal information’ in the Alberta *Personal Information Protection Act*⁴⁰ (PIPA), which stated the following.

‘personal information’ means information about an identifiable individual.

³⁸ 2011 ABCA 94 (CanLII), <https://canlii.ca/t/fkqkl>.

³⁹ *Ibid.* The fraud at issue was when a stranger picked up an order without customer authority or when a customer picked it up and later denied either receiving or paying for it.

⁴⁰ RSA 2000, c.P-6.5, subsection 1 (1).

[59] Noting that the appellant argued that neither a driver's licence number nor a licence plate number was captured by this definition, the Court stated that the individual must not only be identifiable but, for the information to be 'personal' in any reasonable sense, it must be related directly to the individual. As such, the definition did not apply to indirect or collateral information on its own. For the Court, information that related to an object or property was not information about an individual simply because an individual may own or use such object or property.⁴¹

Since virtually every object or property is connected in some way with an individual, that approach would make all identifiers 'personal' identifiers.

[60] The Court set this statement in the context of PIPA's scheme and purpose which required the collection, use and disclosure of personal information to be balanced between the right of the individual to have their personal information protected and the need of an organisation to collect, use and disclose personal information for reasonable purposes. The Court then continued.⁴²

... It is not reasonable to expand the meaning of 'about an individual' to include references to objects that might indirectly be affiliated or associated with individuals. Some identification numbers on objects may effectively identify individuals. Many, however, are not 'about an individual' who owns or uses the object, they are 'about the object'.

[61] The Court then acknowledged that the AB-IPC's conclusion that a driver's licence number was personal information was reasonable because, like a social insurance number, it was uniquely related to the individual and, with access to a proper database, it could be used to identify a particular individual. However, it was also of the view that a licence plate number was something different.⁴³

The fact that the vehicle is owned by somebody does not make the licence plate number about that individual. It is 'about the vehicle'. The same reasoning would apply to vehicle information (serial or VIN) numbers of vehicles. Likewise a street address identifies a property, not a person, even though someone may well live in the property. The licence plate number may well be connected to a database that contains other personal

⁴¹ Leon's at para. 46-48.

⁴² *Ibid.* at para. 48.

⁴³ *Ibid.* at para. 49.

information, but that is not determinative. The appellant had no access to that database, and did not insist that the customer provide access to it. [My emphasis]

[62] The dissent in *Leon's* was also informative in its analysis of the PIPA definition of 'personal information'.⁴⁴ Its analysis resulted in two principles to be applied in interpreting 'information about an identifiable individual' as follows.⁴⁵

1. *The words used are deliberately expansive and must be interpreted broadly. ... The words 'information about' describe **any information** 'about' an identifiable individual and not just information an individual would 'reasonably expect' to keep private.*

[Emphasis in original]

2. *[PIPA] speaks of an 'identifiable individual' not an 'identified individual'. Thus, the information must be about a person who is known or can be identified either from the information itself, or when that information is combined with other information.*

[63] In applying these principles to the driver's licence number issue, the dissent agreed with the AB-IPC's conclusion that a driver's licence number amounted to information about an identifiable individual because, as the AB-IPC stated, it could lead to further identifying information about the licence holder when searched in the appropriate database. In so agreeing, the dissent also found that a driver's licence number was, by itself, 'information' about that person because of what it represents and what adverse things it could be put to use to by bad actors.⁴⁶

[64] In applying these principles to the licence plate number issue, the dissent also agreed with the AB-IPC's conclusion that a licence plate number amounted to information about an individual but acknowledged that the question was not as clear as with a driver's licence number due to the appellant's assertion that a licence plate number was 'about' the vehicle. The dissent found, however, that

a licence plate number, although publicly displayed, could be searched in the appropriate database, and would provide information about the registered owner. Moreover, a licence plate number of a vehicle driven by an individual is information about the

⁴⁴ *Ibid.* at para. 102.

⁴⁵ *Ibid.* at para. 114.

⁴⁶ *Ibid.* at para. 116.

*individual, whether it is owned, rented or borrowed. Every datum centralized in one locale increases the ease of targeting an individual for mass marketing and theft.*⁴⁷

[65] The dissent reached this view because PIPA was not designed to protect an expectation of privacy but to “acknowledge that the use of modern technology in commerce has made vast quantities of personal information publicly available, and while it is impossible to control or regulate the flow of information about individuals completely, it is possible to control its collection, use and disclosure by organizations.”

[66] The Ontario Information and Privacy Commissioner (ON-IPC), in Order PO-2410,⁴⁸ looked at VINs concerning a decision by the Ministry of Environment (Ministry) to sever responsive records from a previously accessed ‘vehicle test emission’ database containing, amongst other things, VINs but not the vehicle owners. The Ministry cited, as one reason for its decision under the Ontario *Freedom of Information and Protection of Privacy Act*, the unjustified invasion of personal privacy.

[67] The Ministry submitted, amongst other things, that once in possession of a VIN, an individual could use information available to the public to identify the owner of a vehicle and that, in combination with other information in the vehicle test emission database, this would amount to the disclosure of the vehicle owner’s personal information.

[68] The Appellant submitted, amongst other things, that a VIN is a unique 17-digit alphanumeric identifier that uniquely identifies each motor vehicle made in the world. It is never assigned to an individual and when the vehicle is sold, the VIN goes with it. Moreover, the vehicle test emission database was information about motor vehicle emissions and not related to an individual. Even if one could obtain more than a name from the main Ministry of Transport database,⁴⁹ which the public and media cannot do, the VIN information in the vehicle emission database would still be information about a vehicle and not an individual.

[69] The ON-IPC agreed with the Appellant and concluded that a VIN was not information about an identifiable individual because a VIN is information about a vehicle. It is tied to that vehicle and not the owner, noting that when the identity of the vehicle owner changes, the VIN remains the same.

⁴⁷ *Ibid.* at para. 119.

⁴⁸ <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/132387/index.do?q=VINs>.

⁴⁹ The Ministry of Transportation database was separate from the vehicle test emission database.

[70] The ON-IPC also stated that, in some circumstances, a VIN might be considered personal information, such as when a VIN is found in combination with other information in a record that includes, for example, the vehicle owner's name and the particulars of a motor vehicle accident in which the owner and vehicle were involved. However, in the issue at hand, the ON-IPC found that a VIN could only be linked to other information in the vehicle test emissions database, such as the date, time, location and results of the test. Such information was not personal because it was not about an identifiable individual.

[71] The ON-IPC also concluded that despite a person being legally able, based on a VIN, to obtain from a separate Ministry of Transportation database a vehicle ownership abstract that contained the name of the owner and nothing else, that does not in itself make the VIN information about an identifiable individual. The VIN is, in essence, information about the vehicle and linking the VIN to a vehicle owner's name does not convert it into personal information.

Types of Personal Information

[72] Unlike the definition of 'personal information' in PIPA, as cited by *Leon's*, the definition in ATIPPA sets out a non-exhaustive list of its types.

[73] Two such types are as follows.

(i) information about

(i) an asset that they wholly or partially own or owned, ...

(j) a personal unique identifier that has been assigned to them, ...

[74] I will address the latter type first. A 'personal unique identifier' of an individual is defined by ATIPPA as "an identifier that (a) is assigned to the individual, and (b) uniquely identifies the individual in relation to a public body."

[75] In *Leon's*, the Court found that a driver's licence number was personal information, as defined in PIPA, because it was directly related to the individual and, with access to a proper database, it could be used to identify a specific individual. I am of a similar view that a driver's licence number would constitute a 'personal unique identifier' under ATIPPA because it is assigned to an individual and uniquely identifies them in relation to the Department. However, I am also of the view that this would not extend to a VIN.

[76] According to the Insurance Bureau of Canada, a VIN is like a fingerprint in that it “provides key information about a vehicle’s manufacturer, model, model year, make, equipment and class.”⁵⁰ It further states the following.⁵¹

A VIN identifies a specific car to the insurance industry, law enforcement, governments and concerned stakeholders. A car’s VIN:

- *is engraved on a metal plate on the driver’s side of the dashboard and in other places on the car;*
- *provides basic information about the car, including the make and model and where and when it was built;*
- *stays the same no matter how many times the car changes owners and licence plate numbers;*
- *can be used to track the history of the car – for example, whether it has been in any serious crashes, whether it has been stolen and how many owners it has had; is used by insurance companies to set accurate premiums; [and]*
- *can help police find the rightful owner if the car is stolen.*

[77] There is nothing in this information concerning a VIN that contemplates or shows a direct relationship between it and an individual. It is about a thing known as a vehicle. Like a street address, a VIN is visibly located for public viewing, including passersby, police officers and mechanics, but does not, on its own, convey any information whatsoever about the individual who may own or drive the vehicle.

[78] Based on the foregoing, I am of the view that a VIN is not directly related to an individual because it is ‘about’ a vehicle.

[79] I will now address the type of personal information called an ‘asset’.

[80] An ‘asset’ is not defined in ATIPPA, but Black’s Law Dictionary defines it as “an item that is owned and has value.”⁵² Examples could include, amongst other things, cash, inventory,

⁵⁰ <http://www.ibc.ca/qc/auto/branding/vin-numbers>.

⁵¹ *Ibid.*

⁵² *Black’s Law Dictionary*, 11th ed., s.v. ‘asset’.

equipment, real estate, accounts receivable, goodwill, or specialised knowledge and skill.⁵³ Such assets could also be possessed by a person, a business, or organisation.⁵⁴

[81] In my view, an asset that is, was or can be owned, partially or wholly, by an individual and has value could include a vehicle. As such, a vehicle can be identified in many ways, such as by its make, model and year, its colour, condition and appearance, its commercial or personalised markings (if any), its licence plate number or its VIN. It can also be identified nominally by who is seen driving or riding in it, where it is seen parked, or what it is observed doing from time to time.

[82] However, for the asset to be personal information about an identifiable individual, such information must relate to the individual and not to the vehicle itself. A VIN, in the absence of appropriate access to a controlled database, conveys nothing about an identifiable individual in much the same way that, for example, a merchant's list of television serial numbers provides nothing without appropriate access to a controlled database of purchasers. As can be seen from the above Insurance Bureau of Canada reference, a VIN simply provides basic information about the vehicle, its history and its insurability, noting it never changes no matter how many times the vehicle legally changes owners and licence plate numbers.

[83] I am therefore of the view that where an asset is, for example, a vehicle identified by a VIN, it cannot be about an identifiable individual because it can only be about the vehicle as a thing. If this were otherwise, then all assets would be personal information because virtually all of them are connected in some way to an individual, however formally or anecdotally. The Court in *Leon's* found that such an approach was unreasonable.

[84] That said, the YBS-Director was of the view that non-personal data, such as accident information and VINs, could be combined with other relevant information, such as social media, to identify, albeit indirectly, an individual involved in an accident, especially where the annual number of accidents is very small for Yukon communities and neighbourhoods with a small population base. In turn, this could reveal highly sensitive information, such as cause of death or injury.

[85] However, the YBS-Director did not provide any evidence to establish a reasonable basis for taking this view. His sole contention, and that of the Department, was that it would be possible to identify an individual involved in an accident, but he did not provide any evidence well beyond or considerably above a mere possibility, such that the combination of accident

⁵³ *Ibid.*

⁵⁴ <https://dictionary.cambridge.org/dictionary/english/asset>. It defines 'asset' as, amongst other things, "something having value, such as a possession or property, that is owned by a person, business, or organization."

information and VINs with, for example, social media and other publicly accessible sources could, as a matter of reasonable probability, amount to personal information about an identifiable individual.

[86] It may be that the availability of open-source venues that can be searched and used for purposes that have no connection to the purpose for which the original information was collected by the Department could indirectly connect an individual to non-personal data, especially in a small jurisdiction such as the Yukon, but the Department would have to provide clear probative evidence to that end, which it did not. That which is merely possible is not that which is probable.

[87] A VIN is not personal information. It is not a personal unique identifier. It is not an asset that, on its own, constitutes information about an identifiable individual. The same would apply, in my view, to the accident data as espoused by the YBS-Director. 'Accident city and location', as well as 'date and time', are not information about an identifiable individual. They are about an accident.

[88] While his concerns focus on potential indirect links between various non-personal data that may lead to the identification of an individual, recall that subsection 70 (1) is about, amongst other things, prohibiting access by an applicant to a third party's personal information held by a public body in certain circumstances. It is not about non-personal information. Therefore, the YBS-Director's concerns are not something contemplated by this provision and cannot constitute grounds for severing the responsive records in any way.

[89] I have examined the redacted Records in data fields 1 to 13 and have come to the following conclusions about them.

1) ACCIDENT_CASE_ID

This data field consists solely of a series of separate and distinct numbers. It refers to a particular accident as further described under the horizontally successive data fields that follow.

2) ACCIDENT_TYPE_DESC

This data field consists of a series of accident descriptors in no particular order: 'property damage over \$1000', 'personal injury', or 'non reportable, under \$1000, no injury, no death'.

3) PRIMARY_ACCIDENT_DESC

This data field consists of a series of accident descriptors in no particular order that signify the type of accident: 'side swipe', 'rear end', 'intersection', 'fixed object', 'off road left', 'off road right', 'unknown', 'parking', 'left turn', 'other', 'backing', 'overtaking', 'head on', and 'right turn'.

4) ACCIDENT_DATE

This data field consists of a series of calendar years in a consecutive order, each of which signifies the year of the accident: '2016', '2017', '2018', '2019', '2020', and '2021'.

5) TOTAL_VEHICLES

This data field consists of a series of numbers in no particular order that signify how many vehicles were involved in the accident. The numbers are either '1' or '2'.

6) POLICE_ATTEND_IND

This data field consists of whether (or not) the police attended the accident. The indicators, in no particular order, are either 'yes' or 'no'.

7) ACCIDENT_CITY

This data field consists of a series of cities, towns or communities in which the accident occurred. The geographic locators, in no particular order, are 'Whitehorse', 'Teslin', 'Haines Junction', 'Dawson City', 'Beaver Creek', 'Carcross', 'Carmacks', 'Watson Lake', 'Mayo', 'Pelly Crossing', 'Faro', and 'Ross River', although there is at least one entry that does not indicate any locator.

8) ACCIDENT_LOCATION

This data field consists of a series of accident location descriptors in no particular order that signify where the accident occurred: 'at intersection', 'between intersection/exchanges', 'parking lot single/multi-level', 'other', 'intersection of road and driveway or alley', 'unknown', 'bridge', 'exit intersection', 'entrance acceleration lane', 'not applicable', and 'exit ramp'.

9) VEHICLE_COLOUR_CODE

This data field consists of a series of vehicle colours in no particular order: 'red', 'white', 'green', 'grey', 'black', 'blue', 'maroon', 'brown', 'yellow', 'purple', 'orange', 'unknown', and 'multi'. It also consists of several entries that are left blank.

10) TRAVEL_DIRECTION

This data field consists of a series of descriptors in no particular order that signify travel direction or whether the vehicle was stationary at the time of the accident: 'east', 'north', 'south', 'west', and 'parked'. It also consists of entries that are left blank.

11) ESTIMATE_VEHICLE_DAMAGE

This data field consists of a series of numbers that signify the dollar estimate of vehicle damage in the accident. Virtually all the entries are '0' but there are some entries for which specific amounts are given: '1260', '1000', '8000', '13000', '2958', '2000', '4996', '1400', '30000', '5000', and '1957'.⁵⁵

12) INSURANCE_COMPANY

This data field consists of a series of insurance company names, brokers or self-insured entities in no particular order that signify what entity was involved for purposes of insurance as the result of the accident: 'Aviva', 'Peace Hills General Insurance', 'Primum', 'Cooperators', 'Meloche Monnex', 'Premium Insurance Co.', 'The Personal', 'TA Firth', 'Security National Insurance Company', 'Wawanesa', '21st Century', 'TD', 'State Farm', 'Royal Sun & Alliance', 'Northbridge Commercial', 'Class Insurance', 'Allstate', 'Progressive', 'Travelers/Hub International', 'Marsh Canada', 'Zurich', 'USAA General Indemnity Co.', 'Safeco', 'Intact Insurance Company', 'Dyck Insurance', 'Royal Facility Association', 'AON Reed Stenhouse', 'RCMP', 'ICBC', 'Geico', 'Tennessee Progressive', 'RSA Insurance Group', 'Federal Government', 'Certos Home and Auto', 'Public Prosecution Service of Canada', 'August & Associates', 'Lynden Transport', 'Nordic Insurance Company', 'Yukon Government', 'Lloyds', 'Chubb Insurance Co of Canada', 'Surex Insurance Broker', 'Monarch Insurance', 'Norland Insurance', 'The Dominion of Canada', 'Georgia Insurance Policy', 'Fleet Insurance', 'Manitoba Public Insurance', 'Pippel', 'Lancer', 'Federated', 'Repwest', 'MKH Insurance', 'Protective', 'Arthur J Gallagher Canada', 'Florida

⁵⁵ There are 23 \$1000 entries and two \$2000 entries.

Automobile', 'Alaska Insurance', 'Alberta Motor Association', 'Canada Broker Link Inc.', 'VISA credit card', 'Fire and Casualty Insurance Company', 'AAA', 'Social Life', 'U-Haul/USAA', 'Canadream', 'Hartford Ins of Midwest', 'SGI', 'Western Financial', 'Norex', 'City of Whitehorse', 'Canadian Insurance Brokers', 'United Services Auto Association', 'Canadian Interprovince-Insight Insurance', 'Bariel MacGregor', 'The Hertz Corporation', 'Economic Mutual', 'Fraserway RV Rentals', 'Hasting Mutual Insurance', 'Sovereign General', 'Hoffman Kool Insurance', 'Royal Facility Insurance', 'Lribel Insurance Group', 'Scotia Life', 'Travelers Dominion', 'Novoy/Dyke Insurance', 'Progressive Direct Insurance', 'La Capitale', 'Bellair Insurance', 'Foremost Insurance', 'Elephant Auto Insurance', 'Philadelphia Indemnity Insurance', 'Echelon', 'Allianz', 'Great Alaska Holidays', 'Unifund Insurance', 'Claims Pro Insurance', 'Parks Canada', 'Lumis General Insurance', 'Capri Insurance', 'Desjardins', 'CIBC', 'Marsh USA', 'CapriCMW', 'BNS Insurance', 'Jevco Insurance Company', 'Riverside Insurance', and 'Ecomutual Insurance Co.'

The data field also consists of the following generic entries in no particular order: 'self-insured', 'unknown', 'unknown left scene', 'unknown but insured', 'not stated', 'failed to produce', 'not provided', 'none', '?', 'not discussed with RCMP', 'personal insurance', and 'not disclosed'. Some entries are left blank.

13) VIN

This data field consists of a series of alpha-numeric VINs that signify what particular vehicle was involved in the accident. Some entries are left blank.

[90] Even though the Department did not redact data fields 14 and 15, I have also examined them to determine the type of information they respectively conveyed.

14) VEHICLE_NUMBER

This data field consists of a series of numbers in no particular order that signify which vehicle sustained damage in the accident. The numbers are either '1' or '2'.

15) IMPACT_LOCATION

This data field consists of a series of descriptors in no particular order that signify vehicle damage: 'front including engine hood & windshield', 'right front third of vehicle', 'right middle third of vehicle', 'right rear third of vehicle', 'entire right side', 'left front third of vehicle', 'left middle third of vehicle', 'left rear third of vehicle', 'entire left side', 'rear including trunk', 'roof', and 'undercarriage'.

It also consists of generic entries in no particular order: ‘unknown’, ‘no apparent damage’, or ‘other’. Some entries are left blank.

[91] I will now examine these data fields along a horizontal axis by compiling them into a spreadsheet-like table and inserting similar but fictitious data under each heading to determine if this ‘control’ record contains any personal information about an identifiable individual. Because there are 15 data fields, as above, I will simply use the number of each to maintain the horizontal integrity of the table across the page.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----

11111111	Property damage > \$1,000	Side swipe	2022	2	Yes	Milepost XXXX Alaska Highway	At intersection	Blue	North	0	ICBC	AA1AAAAA1AA1111111	2	Rear including trunk
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[92] Taken across this horizontal axis, as would appear in an ordinary spreadsheet, I am of the view that none of the information contained in this control record is personal information about an identifiable individual nor does any data field reveal, in any combination, personal information. The record only contains non-personal information about an accident which, in and of itself, is coded by the Department. In examining the redacted Records in spreadsheet form, inclusive of the data entries in each data field, I am of the same view. They do not constitute personal information.

[93] In making this finding, I note that data fields 14 and 15 were released in unredacted form by the Department Head to the Complainant with no reasons given. As such, it is unclear why the Department Head redacted the non-personal data in data fields 1 to 13, none of which contains personal information, as I have found.

[94] For the reasons above, the redacted Records within data fields 1 to 13 do not meet the severing requirement under subsection 70 (1).

2) Release of third party confidential business information – subsection 77 (1)

[95] The Department indicated in its submissions that subsection 77 (1) may apply to some of the information sought by the Complainant. Its submission was based on the YBS-Director's second concern that disclosing insurance company information, in concert with VIN information, would be akin to providing the Complainant with confidential business information about an insurance company's market share in the Yukon.

[96] In the response letter provided by the Department Head to the Complainant, the decision of the Department Head was to withhold some of the information requested by the Complainant under subsection 70 (1). The response letter did not include a decision by the Department Head about the application of subsection 77 (1) to withhold any of the information requested by the Complainant in the Access Request.

[97] Subsection 77 (1) is a discretionary exception to the right of access under ATIPPA. The IPC has stated the following about a public body's citing of a discretionary exception at the review stage⁵⁶ of a decision regarding access to information.⁵⁷

- a) A public body is obligated to cite any exceptions to the right of access in its response provided to an applicant regarding their access request.
- b) In general, a public body will not be able to cite new exceptions to the right of access at the review stage (i.e., mediation or inquiry) that were not considered in its response to an applicant.
- c) The IPC may consider whether a discretionary exception to the right of access applies at the review stage when the exception was not included in the response to the applicant, and both cogent and clear new evidence results in the public body applying a new discretionary exception.
- d) A public body cannot rely on a new discretionary exception at the review stage unless permitted to do so by the IPC.

[98] The information that the Department is relying on to cite the discretionary exception at the investigation stage associated with the Access Request is the exact same information used

⁵⁶The review stage in the prior ATIPPA is the same as the investigation stage in the new ATIPPA regarding a decision to refuse or withhold information that is subject to an access request.

⁵⁷Inquiry Report ATP15-055AR, Department of Justice, June 8, 2012, at paras. 140 to 147 (YK IPC).

by the Department Head to make the decision to withhold some of the information from the Complainant under subsection 70 (1). As such, the Department Head had the opportunity, using the same information that was before them, to decide whether subsection 77 (1) applied to any of the information sought by the Complainant.

[99] As indicated, the response provided to the Complainant cited only subsection 70 (1) as the Department Head's decision to withhold information from the Complainant's Access Request. Given this, I will not permit the Department to cite subsection 77 (1) at the investigation stage to withhold information from the Complainant.

Finding – Issue 1

[100] Subsection 70 (1) does not require the Department Head to withhold from the Complainant the information redacted from the responsive records.

Issue 2 – Did the Department Head make reasonable efforts to respond to the Access Request in an open, accurate and complete manner, in accordance with subsection 64 (5)?

[101] The complaint made by the Complainant under this subsection is that the Department provided the Records in a format that was unusable by the Complainant and in so doing violated the duty under subsection 64 (5) to respond to the Complainant, openly, accurately and completely.

Relevant Law

[102] Subsection 64 (5) states as follows.

(5) The head of a responsive public body must make reasonable efforts to respond to an applicant under this section in an open, accurate and complete manner. [My emphasis]

[103] Paragraph (1)(c) under section 64 requires the Department Head to provide the applicant with access to the information to which they have been granted access in accordance with section 65.⁵⁸

[104] Section 65 sets out how the records requested must or may be provided. It states as follows.

⁵⁸This requirement is subject to paragraph 64 (7)(b), which requires the applicant to pay any costs associated with an access request prior to receiving any records. This is not at issue here because the applicant paid the costs prior to receiving the records.

65(1) The head of a responsive public body must, in accordance with the regulations, if any, provide an applicant with access to the information referred to in paragraph 64(1)(a) by

(a) in the case of information of which the responsive public body can reasonably make a copy, providing the copy of the information to the applicant; or

(b) in the case of information of which the responsive public body cannot reasonably make a copy, providing the applicant with a reasonable opportunity to examine the information.

(2) If information to which an applicant has been granted access is contained in an electronic medium, the head of the responsive public body must provide a copy of the information to the applicant only if

(a) the copy can be created using the technical capabilities of the responsive public body; and

(b) the head is satisfied that providing the copy would not unreasonably interfere with the operations of the responsive public body.

(3) If information to which an applicant has been granted access is contained in an electronic medium and is, or forms part of, a dataset, the head of the responsive public body must provide a copy of the information to the applicant in an electronic form that is capable of re-use only if

(a) the information can be provided in that form using the technical capabilities of the responsive public body; and

(b) the head is satisfied that providing the information in that form would not unreasonably interfere with the operations of the responsive public body.

(4) The head of a responsive public body may create a record that contains information in a medium other than the medium in which the responsive body ordinarily holds the information if

(a) the applicant has requested the information in the other medium; and

(b) the head is satisfied that providing the information in the other medium would be less costly for the responsive public body than providing it in the original medium.

(5) The head of a responsive public body is not required under this section to provide information in a language other than the language in which the information is held by the responsive public body.

The Department's Submissions

[105] The Department quoted subsections 64 (1) and (5), but it did not provide any submissions on why it bolded the following terms.

*64(1) Subject to subsections (3) and 92(1), the head of the responsive **public body must respond to an access request**, through the access and privacy officer or in the prescribed manner, if any, **not later than the response date** for the access request by ...*

(b) withholding from the applicant, in accordance with the regulations, if any, the following information and records relevant to the access request that are held by the responsive public body: ...

*(ii) information and records to which the **head has determined that access is prohibited** under Division 8, ...*

*64 (5) The head of a responsive public body must make reasonable efforts to respond to an applicant under this section in an **open, accurate and complete manner**.*

[106] The Department then stated, in respect of the Access Request and the content within of the ATIPP Office Corporate Information Management A/Manager's Statutory Declaration, that the Department and the ATIPP Office did the following.⁵⁹

- a) Were responsive regarding the existence of the [requested] records, per subsection 46 (1).
- b) Communicated ability to grant only access in part, and noting the reasons why to the [Complainant], as well as the costs to produce the partial record, per section 54.
- c) Communicated and assisted the [Complainant] throughout the process.
- d) Coordinated between all parties involved in the [Access Request].
- e) Met all required timeframes stated under subsection 46 (1), paragraph 50 (1)(a) and sections 53-55.

⁵⁹Department Submissions at 3.

[107] The Department added that there was no record of the [Complainant] requesting a specific format [in respect of the responsive Records]. As such, the Department provided the responsive Records in PDF format to reduce the ability to modify records or utilise software that aids in the unmasking of redactions.⁶⁰

Analysis

[108] In determining this issue, I need to consider if the Department Head met their duty to assist the Complainant pursuant to subsection 64 (5), which states as follows.

(5) The head of a responsive public body must make reasonable efforts to respond to an applicant under this section in an open, accurate and complete manner

[109] In my view, this subsection is more than mere words or goals. It places a mandatory legal duty on a public body head (PB Head) in respect of the transparency, quality and sufficiency of the work done to provide responsive information to an applicant.

[110] I am supported in my view by the Prince Edward Island Information and Privacy Commissioner (PEI-IPC). In Order No. FI-16-005, the PEI-IPC reviewed a public body's decision to refuse access to records setting out ambulance response times concerning a particular community area for a specified period.⁶¹ One of the issues the PEI-IPC examined was whether the public body fulfilled its duty under subsection 8 (1) of the PEI *Freedom of information and Protection of Privacy Act*, a provision very similar to subsection 64 (5), which states as follows.

8 The head of a public body shall make every reasonable effort to assist applicants and to (1) respond to each applicant openly, accurately and completely.

[111] In determining the importance of this duty to assist, the PEI-IPC turned to *Dagg v. Canada (Minister of Finance)* in which the Supreme Court of Canada (SCC) elaborated on why access to information laws facilitate democracy.⁶²

It does so in two ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, secondly, that politicians and bureaucrats remain accountable to the citizenry. As Professor Donald C. Rowat explains in his classic article, "How Much Administrative Secrecy?" (1965), 31 Can. J. of Econ. And Pol. Sci. 479, at p. 480:

⁶⁰ *Ibid.* at 3.

⁶¹ <https://www.canlii.org/en/pe/peipc/doc/2016/2016canlii48837/2016canlii48837.pdf>.

⁶² <https://www.canlii.org/en/ca/scc/doc/1997/1997canlii358/1997canlii358.pdf> at para. 61.

Parliament and the public cannot hope to call the Government to account without an adequate knowledge of what is going on; nor can they hope to participate in the decision-making process and contribute their talents to the formulation of policy and legislation if that process is hidden from view.

[112] For the PEI-IPC, the correlation between the SCC’s statement and the importance of the duty to assist an applicant was characterised by the fact that it is a mandatory duty, one that must be discharged openly, accurately and completely.⁶³

[113] Later in the report, the PEI-IPC elaborated on these three terms. For her, responding openly to an applicant meant “to have open communication with the applicant,”⁶⁴ something on which she elaborated further by referring to, amongst other things, a subpassage in Order No. FI-16-003.⁶⁵

[125]...

[105] the underpinnings of public bodies’ duty to engage in discussions with applicants and to assist in narrowing requests flow naturally from the circumstances of each access request. A public body is the party that has the background, knowledge and familiarity, not only with records in its possession, but also with the FOIPP Act and its Regulations. An applicant is at a disadvantage as a newcomer to this process, and it is up to the public body to guide the applicant. I find that this is an integral part of a public body’s duty to assist applicants...

[114] I take from this decision that the duty to assist requires, amongst other things, that a PB Head communicate with an applicant about the nature and scope of the access request, the applicable timeframes, any necessary clarifications regarding the access request, and the steps in the search process.

[115] The Saskatchewan Information and Privacy Commissioner (SK-IPC) also considered the terms ‘open, accurate and complete’ in Review Report 181-2020, in which a rural municipality had released a transcript of a redacted audio recording of a council meeting to an applicant, as opposed to the redacted recording requested by the applicant.⁶⁶

⁶³ *Supra*, note 61 at para. 36.

⁶⁴ *Ibid.* at para. 40.

⁶⁵ *Ibid.* at para. 41.

⁶⁶ <https://www.canlii.org/en/sk/skipc/doc/2022/2022canlii37556/2022canlii37556.pdf>.

[116] The SK-IPC first examined subsection 5.1 (1) of the *Local Authority Freedom of Information and Protection of Privacy Act* which stated as follows.

Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

[117] He interpreted this to mean that local authorities should make a reasonable effort to identify and seek out responsive records, explain to the applicant the steps in the process, seek any necessary clarification on the nature or scope of the access request within the legislated timeframe, and do so without delay.⁶⁷ He also considered a ‘reasonable effort’ to be what a fair and rational person would expect to be done or would find acceptable and helpful in the circumstances, noting that how a local authority fulfills this duty would depend on the situation and the judgement brought to bear.⁶⁸

[118] In making this interpretation, he stated the following about responding openly, accurately and completely to an applicant.⁶⁹

[17] The requirement to respond openly means that a local authority must be honest, forthcoming and transparent. Where a decision is made not to provide an applicant with all or part of a record, a local authority should provide the reasons for the refusal in an upfront and informative manner. To respond openly to an access request, local authorities must be transparent and provide explanations of the processes, actions and decisions taken to respond to an access request.

[18] To be accurate means the local authority must provide the applicant with sufficient and correct information about the access process and how decisions are made. This includes understanding what the applicant is actually looking for and includes clarifying the nature of the access request.

[19] A complete response is one that includes every item or element, without omissions or deficiencies; and is not lacking in any element or particular. Furthermore, it means the information from a local authority must be comprehensive. A local authority should provide all the necessary details to enable an applicant to understand how a decision was reached. This will include explaining the factors that were relied upon in exercising its discretion.

⁶⁷ *Ibid.* at para. 14.

⁶⁸ *Ibid.* at para. 15.

⁶⁹ *Ibid.* at paras. 17-19.

[119] I agree with the PEI-IPC and the SK-IPC on these points. Based on the foregoing, a PB Head would, in my view, meet the requirements of subsection 64 (5) by prioritising this duty to assist and putting in place the following non-exhaustive guidelines to be exercised consistently, diligently and transparently.

- Communicate honestly and sufficiently with an applicant about:
 - the nature and scope of the access request;
 - how the request might be narrowed while still suiting the applicant;
 - what clarifications may be required to minimise possible confusion in what is being requested;
 - the legislated timeframes;
 - the steps involved in searching for any responsive records;
 - how access request decisions are made; and
 - where all or part of a record is subsequently withheld, the clear and informative reasons for the refusal.⁷⁰
- Document reliably and thoroughly about:
 - how the search was established;
 - its nature and scope;
 - who conducted it;
 - what steps were taken to identify any responsive records;
 - what steps were taken to locate these records;
 - what record formats were involved in the search;
 - the reasons for concluding that all responsive records were found without oversight or shortcoming; and
 - how all or part of the records in the medium, format and language requested were provided to the applicant.

[120] In exercising these guidelines, I note that the duty to assist cannot be met if the PB Head simply chooses unilaterally to interpret an access request narrowly, thus divesting an applicant of responsive records they might otherwise be entitled to receive. The point, in respect of a PB Head's duty, is to engender a culture of access because, as reflected in the PEI-IPC's deliberations above, democracy depends on government accountability.

[121] This conviction is certainly true in the context of the Yukon, but I would extend these guidelines to include one more duty; that is, 'communicate honestly and sufficiently with an

⁷⁰I am of the view, however, that this duty to assist does not require a PB Head to provide an applicant with, for example, a technical or legal interpretation of the records.

applicant about *any format issues*'. This is because ATIPPA sets out how access is to be provided to an applicant, as will be discussed below.⁷¹

[122] In applying the duty to assist to the facts, I also note that all the subsections in section 64 are only concerned with a PB Head's response to an access request, as opposed to a response by another means, because it is the public body for which the PB Head is responsible that may have responsive records in its custody or control. How the PB Head responds is through the Access and Privacy Officer, or by means of a prescribed method,⁷² but these conduits do not impose or lessen any section 64 duties on the PB Head's duties vis-à-vis their response except to require their use as conduits for the response. It also follows that a PB Head cannot rely on the efficacy of these conduits as a substitute for their own response obligations.

[123] That said, the issue at hand is whether the Department Head made reasonable efforts to respond to the Access Request in an open, accurate and complete manner, in accordance with subsection 64 (5).

[124] The Department submitted that, amongst other things, it communicated and assisted the Complainant throughout the Access Request process but, if it did so, then why did it unilaterally decide to issue the unredacted and redacted Records in a format other than the one it ordinarily uses in its operations?

[125] Recall that the Complainant's Complaint related to this issue is that the Department provided the unredacted and redacted Records in a format that made the data difficult to comprehend. Recall also that the Department submitted that it provided the redacted and unredacted Records in PDF format to reduce the ability to modify records or utilise software that aids in the unmasking of redactions.

[126] I note, however, that the Complainant did not specify a format other than to state in their Access Request that they had obtained similar data from the Department in a previous access request. I also note, as previously mentioned, that the Department Head made their PDF-format decision without conferring with the Complainant; hence, the format complaint.

[127] Subsection 65 (1) imposes a mandatory requirement on a PB Head to provide an applicant with access to information. They must either provide a copy where the public body can reasonably make a copy of the information or, where it cannot reasonably make a copy, provide a reasonable opportunity to examine the information.⁷³

⁷¹ *Infra*, at paras. 126-127.

⁷² There are no prescribed methods at the time of this Investigation Report.

⁷³ This is similar to subsections 11 (2) and (4) of the current PEI legislation.

[128] However, the general scheme in subsection 65 (1) is refined by subsections 65 (2-3) where the following two formats apply.⁷⁴

- 1) Where the information is contained in an electronic medium, by providing a copy if the public body can create a copy using its technical capabilities unless, in the opinion of the PB Head, doing so would unreasonably interfere with its operations.⁷⁵
- 2) Where the information is contained in an electronic medium and is or forms part of a database, by providing a copy capable of re-use if the public body can create a copy using its technical capabilities unless, in the opinion of the PB Head, it would unreasonably interfere with its operations.⁷⁶

[129] As previously stated, the Complainant made an access request to the Department for vehicle collision records in Yukon as per 15 data fields: ACCIDENT_CASE_ID, ACCIDENT_TYPE_DESC, PRIMARY_ACCIDENT_DESC, ACCIDENT_DATE, TOTAL_VEHICLES, POLICE_ATTEND_IND, ACCIDENT_CITY, ACCIDENT_LOCATION, VEHICLE_COLOUR_CODE, TRAVEL_DIRECTION, ESTIMATE_VEHICLE_DAMAGE, INSURANCE_COMPANY, VIN, VEHICLE_NUMBER, and IMPACT_LOCATION.

[130] In turn, the Department Head provided the Complainant, through the ATIPP Office, with 774 PDF-formatted pages of responsive Records taken from an internal database ordinarily held by the Department and, based on the information before me, included information collected from written accident reports required under the MVA.

[131] In my view, the responsive Records most appropriately fit within subsection 65 (3), that of information contained in an electronic medium and part of a database. In this situation, the key consideration is ‘capable of re-use’, something only an applicant can determine. I take ‘re-use’ to mean the information contained in an electronic medium and part of a database that is reasonably receptive to the same tools that the public body uses to manipulate this information in its ordinary operations.

[132] In applying the Department Head’s duty to assist, as per subsection 64 (5), it follows that it was incumbent on them to make an inquiry of the Complainant as to whether the provision of such records in their ordinary ‘public body’ format were records capable of re-use by them. If the answer was yes, then the Department Head would have been obligated to

⁷⁴ This is similar to subsections 10 (1-2) of the Saskatchewan legislation. Like ATIPPA, it differentiates between records; in this case, records in electronic form and records that it classifies as microfilm, film, sound, video recording or machine-readable records.

⁷⁵ Subsection 65 (2).

⁷⁶ Subsection 65 (3).

provide a copy to the Complainant in that format depending on two conditions. The first was whether the public body had the technological capacity to make a copy and the second was whether the provision of such a copy would, in the Department Head's opinion, unreasonably interfere with its operations.

[133] In Order No. FI-16-005, the PEI-IPC had occasion to determine whether a public body's retrieval and preparation of responsive records to an access request would unreasonably interfere with its operations.⁷⁷ The public body submitted, amongst other things, that providing the records containing the raw data would be more onerous than creating a new record expunged of personal information and that it did not have the necessary resources to process the records given their large volume. The records containing the raw data amounted to approximately 8,000 records contained in eight banker's boxes.

[134] The PEI-IPC looked at the issue from, amongst other things, a fee perspective; that is, the fee the public body could charge the applicant for the responsive records not containing any personal information. She asked the public body to provide an estimate of the time it would take to process the records at issue and then, based on an estimate that she deemed excessive, did her own calculations based on what the public body would legally have to provide. In the end, she arrived at approximately 29 hours compared to the 169 hours assessed by the public body and found, therefore, that the amount of process time would not unreasonably interfere with the public body's operations.

[135] I take from this PEI-IPC example that the determination of 'unreasonable operational interference' is at least a practical matter which requires evidence of rational methodology and metrics.

[136] In the issue at hand, the Department provided no evidence that it was technologically incapable of providing a copy of the records in their ordinary format nor is there any evidence that the Department Head was of the view that any such provision would unreasonably compromise operations. In the absence of this, it stands to reason that the Department would have the capacity to make copies for any number of reasons, not the least of which would be to protect its original records in their ordinary format while, for example, subjecting a working copy to its data manipulation tools and processes.

[137] There is also no evidence that the Department Head, either directly or through the Access and Privacy Officer, contacted the Complainant about providing a copy of the responsive Records that was capable of re-use. Instead, the Department Head, in choosing not to provide a

⁷⁷ *Supra*, note 61 at paras. 50-60.

reusable copy in its ordinary internal format, unilaterally provided the responsive Records in a PDF format because they wanted to reduce the alleged ability of the Complainant to modify them or use software that might unmask the redactions and thus reveal the severed information. It was not appropriate to make such a decision on these grounds. Such reasoning is not contemplated in subsection 65 (3). It is solely about technological capacity and potential operational interference.

[138] The Complainant subsequently asserted that the PDF-formatted Records provided by the Department Head made the information difficult to comprehend. Since the Complainant made no submissions on this assertion, I must infer that the responsive Records at issue are both the unredacted and redacted Records. Having received a copy of the records, I concur that the information therein is both difficult to comprehend because it has columns of information spread across numerous pages and it is also not capable of any kind of re-use, as contemplated by subsection 65 (3), in the supplied PDF format.

[139] Had the Department Head, as per their subsection 64 (5) duty to make reasonable efforts to respond to the Complainant openly, accurately and completely, consulted with the Complainant about the format prior to providing any records, then it is conceivable that they would have discussed whether the Complainant could re-use a Department copy provided in its normal internal format or whether a different format would suffice.

[140] It follows that such a 'format' discussion might have raised subsection 65 (4). This provision gives a PB Head the discretion to create a record that contains information in a medium other than the one the public body ordinarily holds that information. However, this discretion is only triggered if the applicant has requested the information in another medium and if, in the opinion of the head, the cost of granting their request is less than what it would otherwise cost to provide the information in the original medium. If the PB Head and the applicant cannot agree on another medium, then the PB Head would have the authority to provide the record in its normal internal format and the applicant has the right to launch a complaint with the IPC.

[141] That said, any format consideration must occur within the bounds of section 65, albeit sensitive to the applicant's right of access insofar as they could be diminished by a lack of access to the records in another format.

[142] A standard Yukon government access request form includes, amongst other things, the following instructions to an applicant.⁷⁸

⁷⁸ 'Request for Access to Records' YG(4582HPW) Rev.03/2021.

Provide details about your request. For example, do you want specific types of records? Do you know the program areas, positions or persons who would have the information you want? Is the information you want linked to a particular event? The more information you can provide now will help speed up your request later. Maximum 250 words.⁷⁹

[143] These instructions appear to be designed to aid a public body in its search for responsive records and do not mention anything about a type of responsive record format.

[144] The Complainant's Access Request is dated September 24, 2021. It contains 192 words. Had the Complainant wanted the responsive Records to be in a format other than the one normally used by the Department, then it is reasonable that they would have identified the desired format.

[145] The evidence shows that the Complainant did not request the responsive Records to be provided in a specific format, such as PDF documents set out in a spreadsheet. It also shows that they received previous vehicle collision records from the Department vis-à-vis a 2016 access request in the format of an access database and that they wanted the information in their Access Request in a similar format. I infer from this that the information supplied to the Complainant in the database format of 2016 was of the type ordinarily held by the Department and not one difficult to copy and provide to the Complainant.

[146] The evidence also shows that the Department Head did not, at any material time, engage the Complainant in respect of what responsive records format would best suit them.

[147] For the reasons above stated, I am satisfied that the Complainant wanted and expected the Department to provide the responsive records in the format that the Department uses during normal operations to store and manipulate the data, such that it was capable of re-use by the Complainant. I am also satisfied that the Department Head chose on their own accord, and without any authority under ATIPPA, to provide the Records in a PDF format, which rendered the data incapable of re-use by the Complainant.

Finding — Issue 2

[148] I find the Department Head failed in their duty to respond to the Complainant openly, accurately and completely because they did not communicate with the Complainant about an appropriate format nor provide them with a copy of the responsive Records in an electronic format ordinarily held by the Department and capable of re-use.

⁷⁹ Emphasis in the original.

IX FINDINGS

[149] I make the following finding on Issue 1 in respect of subsection 70 (1).

- 1) On balance, the Department Head is not required to withhold from the Complainant the information redacted from the responsive Records under subsection 70 (1).

[150] I make the following finding on Issue 2 in respect of subsection 64 (5).

- 2) On balance, the Department Head failed in their duty to respond to the Complainant openly, accurately and completely because they did not communicate with the Complainant about an appropriate format nor provide them with a copy of the responsive Records in an electronic format ordinarily held by the Department and capable of re-use, as required by subsection 64 (5) together with paragraph 64 (1)(c) and subsection 65 (3).

X RECOMMENDATIONS

[151] I make the following recommendations.

- 1) Because the Department Head did not meet their burden of proving that subsection 70 (1) applies to the information redacted in the redacted Records as determined by me, I recommend that the Department Head disclose the redacted Records in their entirety to the Complainant.
- 2) Because the Department Head did not disclose the unredacted and redacted Records in an electronic format ordinarily held by the Department and capable of re-use by the Complainant as required by subsection 64 (5) together with paragraph 64 (1)(c) and subsection 65 (3), I recommend that the Department disclose the unredacted and redacted Records to the Complainant in their original format or another format that is capable of re-use by the Complainant in accordance with the applicable provisions in section 65.

Department Head's Response to Investigation Report

[152] Section 104 requires the Department Head do the following after receiving the Investigation Report.

104(1) Not later than 15 business days after the day on which an investigation report is provided to a respondent under subparagraph 101(b)(ii), the respondent must, in respect of each recommendation set out in the investigation report

(a) decide whether to

(i) accept the recommendation in accordance with subsection (2), or

(ii) reject the recommendation; and

(b) provide

(i) a notice to the complainant that includes

(A) their decision, and

(B) in the case of the rejection of a recommendation, their reasons for the rejection and a statement notifying the complainant of their right to apply to the Court for a review of the decision or matter to which the recommendation relates, and

(ii) a copy of the notice to the commissioner.

(2) If a respondent accepts a recommendation set out in an investigation report, the respondent must comply with the recommendation not later than

(a) if the respondent is the access and privacy officer, 15 business days after the day on which the notice of acceptance under subparagraph (1)(b)(i) is provided to the complainant; or

(b) if the respondent is the head of a public body

(i) 15 business days after the day on which the notice of acceptance under subparagraph (1)(b)(i) is provided to the complainant, or

(ii) if an extension is granted by the commissioner under subparagraph (4)(a)(i), the date specified in the notice of extension provided under paragraph (4)(b).

[153] Subsection 104 (3) authorises the Department Head to seek an extension of the time to comply with a recommendation as follows.

104 (3) If the head of a public body reasonably believes that the public body is unable to comply with a recommendation in accordance with subparagraph (2)(b)(i), the head

may, not later than 10 business days before the end of the period referred to in that subparagraph, make a written request to the commissioner for an extension of the time within which the head must comply with the recommendation

[154] Subsection 104 (5) deems the Department Head to have rejected a recommendation if they do not provide notice as required or does not comply with it in accordance with the specified timeframes.

Complainant's Right of Appeal

[155] Subsection 104 (5) gives the Complainant the right to appeal to the Yukon Supreme Court if the Department Head rejects a recommendation or is considered to have done so, in accordance with the time limits set out in paragraphs (a) through (c).

ORIGINAL SIGNED

Rick Smith, BA, MCP, LLB
Adjudicator
Office of the Information and Privacy Commissioner

Distribution List:

- Department Head
- Complainant