Yukon Information and Privacy Commissioner

INQUIRY REPORT

File ATP17-36R

Pursuant to section 52 of the

Access to Information and Protection of Privacy Act

Diane McLeod-McKay, B.A., J.D.

Information and Privacy Commissioner (IPC)

Public Body: **Department of Community Services**

Date: **November 13, 2018**

Summary: After receiving an access to information request made to the Department of Community Services (Department by) the Applicant, the Department refused partial access to twenty-one pages of records. The Department separated or obliterated information from these records citing paragraphs 16 (1)(a) and (b). Between mediation and inquiry, the Department decided that paragraph 15 (1)(b) also applied to the information removed from these records. Given that this paragraph is mandatory, the IPC allowed the Department's decision in this regard and reviewed it as part of the Inquiry.

The IPC found that paragraph 15 (1)(b) applies to all of the information removed from records 001 to 006 and affirmed the Department's decision to refuse access to this information. The IPC found that paragraph 15 (1)(b) does not apply to the information removed from records 007 to 022 but that paragraph 16 (1)(b) applies to the majority of the information. The IPC affirmed the Department's decision to refuse access to the information in these records that she found paragraph 16 (1)(b) applies to. After determining that subsection 25 (1) does not apply to the names of employees in these records, she recommended the Department provide the Applicant with access to the information, including the personal information, that she determined paragraph 16 (1)(b) does not apply to.

Statutes Cited:

Access to Information and Protection of Privacy Act, RSY 2002, c.1

Financial Administration Act, RSY 2002, c.87

Government Organisation Act, RSY 2002, c.105

Interpretation Act, RSY 2002, c.125

Cases Cited:

Babcock v. Canada (Attorney General), 2002 SCC 57 (CanLII)

Order F2004-026, *Alberta Labour Relations Board*, September 18, 2006 (AB IPC)

Inquiry Report ATP11-029AR, Department of Energy, Mines and Resources, August 14, 2013 (YT IPC)

Inquiry Report ATP15-055-AR, Department of Justice, June 8, 2016, (YT IPC)

Inquiry Report ATP16-031AR, Department of Environment, September 18, 2017 (YT IPC)

Explanatory note:

All sections, subsections, paragraphs and the like referenced in this Inquiry Report are to the *Access to Information and Protection of Privacy Act* (ATIPP Act) unless otherwise stated.

I BACKGROUND

[1] On November 2, 2017, the Applicant made the following request for access to records of the Department of Community Services (Department).

> *Email, SMS messages, and/or meeting notes concerning the work performance or behaviour of* [the Applicant] *between Community Services employees* [four employees' names]. *Timeline: February 1, 2017 to present.*

[2] The Records Manager assigned #A-6895 to the request for access to records (Access Request).

[3] The response from the Records Manager dated November 10, 2017, to the Applicant's Access Request indicated that the Department granted access in part. Information was

separated or obliterated from the records provided to the Applicant. The provision cited in the response as authority for refusing access to the information was paragraphs 16 (1)(a) and (b).

[4] On December 8, 2017, the Applicant submitted a request for review of the information separated or obliterated from the records to my office. Settlement was attempted but was unsuccessful.

[5] Following the settlement attempt, the Applicant requested an Inquiry to which I agreed.

[6] Sometime between receipt of the request for review and the Inquiry, the Department added another exception that was not included in its original response. Paragraph 15 (1)(b) was identified by the Department as applicable to some of the information that was originally separated or obliterated.

II INQUIRY PROCESS

[7] The Notice of Written Inquiry (Notice) was delivered to the Applicant and the Department (Parties). The date for Inquiry in the Notice was May 7, 2018.

[8] Each Party made submissions setting out their respective positions in respect of the issues.

III ISSUES

[9] The issues identified in the Notice are as follows.

1. *Is the Public Body required by paragraph 15 (1)(b) of the ATIPP Act to refuse the applicant access to the records or information therein?*

2. *Is the Public Body authorized by paragraphs 16 (1)(a) and 16 (1)(b) of the ATIPP Act to refuse the applicant access to the records or information therein?*

IV RECORDS AT ISSUE

[10] The records at issue in this Inquiry consist of twenty-one pages (Records). All the information in Records 001 through 006 have been redacted. Records 007, 008 and 010 to 022 are email communications between the Applicant and employees of the Department and the Department of Environment (Environment).[1] The information appearing under the "from",

[1] The Department provided me with 22 pages. There were, however, no separations or obliterations on page 009. As such, this page is not at issue in this Inquiry.

"sent", "to", "subject line", and "cc" of the emails was not redacted from the Records. No records were refused but rather the information in them was separated or obliterated. As such, I will not examine that portion of the issues related to a refusal of records.

V JURISDICTION

[11] My authority to review the separation or obliteration of information from a record is in paragraph 48 (1)(b).

> *48(1) A person who makes a request under section 6 for access to a record may request the commissioner to review*
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> *(b) a decision by the public body to separate or obliterate information from the record;*

VI BURDEN OF PROOF

[12] Paragraph 54 (1)(a) sets out the burden of proof relevant to this Inquiry and identifies that the burden is on the Department to prove that the Applicant has no right to the information that was separated or obliterated from the Records.

> *54(1) In a review resulting from a request under section 48, it is up to the public body to prove*
>
> *(a) that the applicant has no right of access to the record or the part of it in question*

VII SUBMISSION OF THE PARTIES

[13] The Department indicated the following in its submissions.

a. Records 001 through 006 are drafts of communication plans that formed part of a management board submission to the Executive Council Office and the decision associated therewith had not been made public. It added that "Community Services is not the owner of the document and only assisted in its formation, we have agreed with Environment that it must be withheld, at this time, as per section 15 (1)(b)."

b. Records 007, 008 and 010 to 022 are emails between employees who worked on the communications plan and the emails contain discussions that "centred on the wording, accuracy and amendments of these documents." It added as its authority to separate or obliterate the information from these records under paragraph 15 (1)(b) was "to exclude any draft documents or reference to the draft documents

related to the communications plan…The final decision on this submission has yet to be made public."

[14] It added further as its authority under paragraphs 16 (1)(a) and (b) that:

a. the emails refer to "a management board submission, [that was] submitted by Environment to the Executive Council and include advice, proposals, recommendations, consultations and/or deliberations between employees of Community Services and Environment relating to making government decisions or formulation of the management board submission"; and

b. "Community Services management decided discussions between managers, regarding employee performance with possible discipline, are to be withheld to encourage documentation of such discussions."

[15] In the Applicant's submission, they challenged the submissions put forth by the Department, specifically questioning the two aspects identified in paragraph 14 of this Inquiry Report.

VIII ANALYSIS

[16] Section 5 establishes the Applicant's right to access records in the custody or control of the Department, which is a public body under the ATIPP Act. The Records are in the Department's custody or control.

[17] The only exceptions to the Applicant's right of access to the Records or information therein under section 5 are if an exception applies. The exceptions to the right of access are set out in Part 2 of the ATIPP Act. Most of the exceptions in this Part are discretionary. Some are mandatory. The Department is obligated under subsection 5 (2) to provide the Applicant with the remainder of a record where it is able to separate or obliterate information from records to which it applies an exception. That is what occurred here. The Department is relying on paragraphs 15 (1)(b) and 16 (1)(a) and (b) to separate or obliterate information from the Records provided to the Applicant.

[18] As indicated above, the Department's original response to the Applicant cited only paragraphs 16 (1)(a) and (b) as exceptions to the Applicant's right of access to the information in the Records. At the inquiry stage, the Department added paragraph 15 (1)(b) to refuse some of the information in the Records on the basis that it learned, following mediation, that the Records contained a confidence of the Executive Council.

<u>Addition of Paragraph 15 (1)(b) at Inquiry</u>

[19] I will first address the Department's addition of paragraph 15 (1)(b) as authority to exclude information from some of the Records in its submission for Inquiry. As indicated in Inquiry Report ATP15-055AR,[2] as a general proposition I will not accept the raising of new discretionary exceptions at the inquiry stage of a review. The exception raised by the Department is not discretionary. It is mandatory. Even if the Department had not raised this paragraph as an exception, I would be required to consider whether any of the provisions in section 15 apply to records that I determine, through the course of an inquiry, may contain a Cabinet Confidence.

[20] The Department included in its submissions that these Records formed part of a management board submission. Based on this, and the mandatory nature of section 15, I must determine if any of the Records contain information to which this section applies.

15 (1)(b)

Is the Public Body required by paragraph 15 (1)(b) of the ATIPP Act to refuse the applicant access to the records or information therein?

[21] Section 15 states as follows.

> *15(1) A public body must refuse to disclose a record to an applicant if the disclosure would reveal a confidence of the Executive Council or any of its committees, including*
>
> *(a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;*
>
> *(b) a record containing advice, analyses, policy options, proposals, recommendations, or requests for directions submitted, or prepared for submission, to the Executive Council or its committees;*
>
> *(c) a record used for or reflecting consultation among Ministers on matters relating to the making of government decisions or the formulation of government policy; and*
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> *(d) a record prepared to brief a Minister in relation to matters that*
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> *(i) are before or are proposed to be brought before the Executive Council or its committees, or*

[2] Inquiry Report ATP15-055-AR, Department of Justice, June 8, 2016, Yukon IPC.

(ii) are the subject of consultations among Ministers relating to the making of government decisions or the formulation of government policy.

(2) Subsection (1) does not apply to

(a) a record that has been in existence for 15 or more years;

(b) a record of a decision made by the Executive Council or any of its committees on an appeal under an Act; or

(c) a record the purpose of which is to present background information or explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision if

(i) the decision has been made public,

(ii) the decision has been implemented, or

(iii) five or more years have passed since the decision was made or considered.

In *Babcock v. Canada (Attorney General)* (Babcock), the Supreme Court of Canada (SCC) had occasion to consider the nature of cabinet confidentiality in the context of the *Canada Evidence Act*. Section 39 of that Act authorizes a minister of the Crown or Clerk of the Privy Council to certify whether information constitutes a cabinet confidence. Once certified by a minister or Privy Council, section 39 requires that "disclosure of the information shall be refused without examination … by the court, person or body."[3] The SCC described the principles of cabinet confidence as follows.

> *Cabinet confidentiality is essential to good government. The right to pursue justice in the courts is also of primary importance in our society, as is the rule of law, accountability of the executive, and the principle that official actions must flow from statutory authority clearly granted and properly exercised...*[4]
>
> *The British democratic tradition which informs the Canadian tradition has long affirmed the confidentiality of what is said in the Cabinet room, and documents and papers prepared for Cabinet discussions. The reasons are obvious. Those charged with the heavy responsibility of making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny: see Singh v. Canada (Attorney General), [2000] 3 F.C. 185 (C.A.), at paras. 21-22. If Cabinet members' statements were subject to disclosure, Cabinet members might censor their words,*

[3] *Babcock v. Canada (Attorney General)*, 2002 SCC 57 (CanLII), at para 7.
[4] *Ibid.* at para. 15.

consciously or unconsciously. They might shy away from stating unpopular positions, or from making comments that might be considered politically incorrect. The rationale for recognizing and protecting Cabinet confidences is well summarized by the views of Lord Salisbury in the Report of the Committee of Privy Counsellors on Ministerial Memoirs (January 1976), at p. 13:[5]

> *A Cabinet discussion was not the occasion for the deliverance of considered judgements but an opportunity for the pursuit of practical conclusions. It could only be made completely effective for this purpose if the flow of suggestions which accompanied it attained the freedom and fullness which belong to private conversations — members must feel themselves untrammelled by any consideration of consistency with the past or self-justification in the future. . . . The first rule of Cabinet conduct, he used to declare, was that no member should ever "Hansardise" another, — ever compare his present contribution to the common fund of counsel with a previously expressed opinion. . . .*[6]

The process of democratic governance works best when Cabinet members charged with government policy and decision-making are free to express themselves around the Cabinet table unreservedly. In addition to ensuring candour in Cabinet discussions, this Court in Carey v. Ontario, [1986] 2 S.C.R. 637, at p. 659, recognized another important reason for protecting Cabinet documents, namely to avoid "creat[ing] or fan[ning] ill-informed or captious public or political criticism". Thus, ministers undertake by oath as Privy Councillors to maintain the secrecy of Cabinet deliberations and the House of Commons and the courts respect the confidentiality of Cabinet decision-making.[7]

[22] These principles denote that cabinet confidence must be preserved in order to promote good government.

[23] For paragraph 15 (1)(b) to apply, the Department will need to establish that the Records will reveal a confidence of the Executive Council in the nature of:

a. a record containing advice, analyses, policy options, proposals, recommendations, or

b. requests for directions submitted, or

c. prepared for submission to the Executive Council.

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[5] *Ibid.* at para. 18.
[6] *Ibid.*
[7] *Ibid.*

[24] As previously stated, the burden of proof is on the Department to prove that the Records contain cabinet confidences. In this case, the Department merely asserted that the communications plan was part of a submission to management board without providing further evidence to this effect. The Department is reminded that to meet its burden of proof, it must provide evidence in support of its assertion. Because it did not, I issued a Notice to Produce Records to Environment on August 28, 2018, for the submission. My authority under the ATIPP Act allows me to review records containing cabinet confidences for the purposes of evaluating whether an exception claimed on this basis applies. Environment produced these records to me on September 7, 2018.

Records 001 to 006

[25] The title of Record 001 is "[c]ommunications plan." The communications plan appears as a table and has three pages. The date on Record 001 is July 11, 2017. There are two issues in this Record. They indicate that the purpose of the communications plan is to identify the methods to be used for advertising amendments to two regulations.

[26] The title of Record 004 is also "[c]ommunications plan." This communications plan appears as a table and has three pages. The date on Record 004 is July 17, 2017. There is just one issue in this communications plan. It is the first issue that appeared on Record 001. The purpose identified in this communications plan is the same as above noted.

Executive Council submission

[27] The Executive Council is appointed by the Commissioner of Yukon in accordance with the Gover*nment Organisation Act*.[8] Paragraphs 2 (1)(a) and (b) further describe the composition of the Executive Council as the Premier and those appointed on by the Commissioner on the advice of the Premier (Cabinet). Management board is established under subsection 3 (1) of the *Financial Administration Act* and is described therein as a committee of Cabinet.[9]

[28] The documents produced by Environment are a submission to Cabinet, not to the management board.

[29] There are a number of dates on the documents contained within the Cabinet submission so it is unclear when these documents were submitted. The majority of the dates are in 2018.

[8] *Government Organisation Act,* RSY 2002, c.105. s.2.1(1).
[9] RSY 2002, c.87.

It is clear from the documents in the Cabinet submission that a final version of Records 001 to 006 form part thereof.

[30] There is a document in the Cabinet submission entitled "[c]ommunications plan" and it contains most, if not all, the information contained in Records 001 to 006. Although the communications plan in the Cabinet submission does not identify the second issue on Record 001, there is other documentation in the Cabinet submission referring to this issue from a communications perspective. Based on this evidence, I am satisfied that Records 001 to 006 were prepared for submission to the Cabinet.

[31] From my review of the contents of these Records together with the documentation contained in the Cabinet submission, I am also satisfied that the content consists of advice or proposals for communicating with stakeholders and the public about the regulations' amendments.

[32] Although I have found that paragraph 15 (1)(b) applies to Records 001 to 006 that is not the end of the matter. I must consider if subsection 15 (2) applies. Having considered the provisions in this subsection, I find that none apply.

[33] Based on the foregoing, I find that paragraph 15 (1)(b) applies to Records 001 to 006. As I have found that this paragraph applies to these Records and that it is a mandatory exception, I will not consider if paragraphs 16 (1)(a) and (b) also apply to these Records.

Records 007, 008 and 010 to 022

[34] The Department claims that paragraph 15 (1)(b) also applies to the information separated or obliterated from Records 007, 008 and 010 to 022. I disagree for the following reasons:

a. the emails are between employees of the Department and Environment about the communications plan and other matters; and

b. the emails are not a record that was submitted or prepared for submission to Cabinet.

[35] Based on the foregoing, I find that the Department cannot rely on paragraph 15 (1)(b) to refuse the Applicant access to Records 007, 008 and 010 to 022. I also find that none of the other paragraphs in subsection 15 (1) apply to these Records.

16 (1)(a) and (b)

Is the Public Body authorized by paragraphs 16 (1)(a) and 16 (1)(b) of the ATIPP Act to refuse the applicant access to the records or information therein?

[36] The relevant portions of Section 16 for this part of the analysis states as follows.

> *16(1) A public body may refuse to disclose information to an applicant if the disclosure would reveal*
>
> *(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a Minister;*
>
> *(b) consultations or deliberations involving officers or employees of a public body or a Minister relating to the making of government decisions or the formulation of government policy;*

Records 007,008 and 010 to 022

[37] In Order F2004-026,[10] Alberta's Information and Privacy Commissioner, (AB IPC) interpreted the meaning of paragraphs 24 (1)(a) and (b) of Alberta's *Freedom of Information and Protection of Privacy Act*. These provisions which are similar to our 16 (1)(a) and (b) state as follows.

> *24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal*
>
> *(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,*
>
> *(b) consultations or deliberations involving*
>
> *(i) officers or employees of a public body,*
>
> *(ii) a member of the Executive Council, or*
>
> *(iii) the staff of a member of the Executive Council,*

[38] The AB IPC defined the following criteria as relevant to interpreting paragraph 24 (1)(a) which he referred to as the "advice" provision. He said that the "advice" should:

[10] Order F2004-026, *Alberta Labour Relations Board*, September 18, 2006, IPC AB.

a. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,

b. be directed toward taking an action,

c. be made to someone who can take or implement the action.[11]

[39] He also defined the meaning of "consultation" and "deliberation" in paragraph 24 (1)(b). In so doing he stated the following.

> *When I look at section… 24…as a whole, I am convinced that the purpose of the section is to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is, I believe to allow such persons to address an issue without fear of being wrong, "looking bad" or appearing foolish if their frank deliberations were to be made public. ... I therefore believe that a "consultation" occurs when the views of one or more officers or employees is sought as to the appropriateness of particular proposals or suggested actions. A "deliberation" is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. Here again, I think that the views must either be sought or be part of responsibility of the person from whom they are sought and the views must be sought for the purpose of doing something, such as taking an action, making a decision or a choice.*[12]

[40] I agree with the AB IPC's interpretation of the meaning of consultation and deliberation.

[41] Based on his analyses, he added that same as for "advice" under paragraph 24 (1)(a), consultation or deliberation must also:

a. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,

b. be directed toward taking an action,

c. be made to someone who can take or implement the action.[13]

[42] I agree with the AB IPC that the purpose of allowing public bodies to except, from the right of access, records containing "advice", "consultation" or "deliberations" in certain and limited circumstances, as between employees of public bodies or a Minister, is to facilitate the

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[11] *Ibid*, at para 55
[12] *Ibid, at para. 56.*
[13] *Ibid,* at para. 57.

free flow of information among these individuals so they may arrive at well reasoned decisions without fear of public judgement or other embarrassing ramifications. This is consistent with purposes of the ATIPP Act which are to give the public a right to access public body information subject only to limited and specific exceptions.[14]

[43] The circumstances that must be present for these exceptions identified by the AB IPC contribute to the narrowing of these exceptions such that they are limited and specific and interfere with the right of access only as necessary to facilitate the free flow of information where certain criteria are met.

[44] Based on this, for the Department to establish that paragraphs 16 (1)(a) or (b) apply to Records 007, 008 and 010 to 022, the Records must:

a. contain advice, proposals, recommendations, analyses or policy options that were developed by or for a public body or a Minister (Advice)(16 (1)(a)); or

b. contain:

    i. consultations, the nature of which involves seeking views of one or more employees as to the appropriateness of particular proposals or suggested actions; or

    ii. deliberations involving a discussion or consideration, by the persons described in the section, of the reasons for and against an action; and

    iii. that relate to the making of government decisions or the formulation of government policy (Consultations & Deliberations) (16 (1)(b)); and

c. the Advice or Consultations & Deliberations must:

    i. be sought or expected, or be part of the responsibility of a person by virtue of that person's position;

    ii. be directed toward taking an action; and

    iii. be made to someone or involve someone in the case of deliberations between employees who can take or implement the action.

[14] *Access to Information and Protection of Privacy* Act, RSY 2002, c.1 s.1(1)(a) and (c).

[45] I have reviewed the information separated or obliterated from the email chains in Records 007, 008 and 010 to 022 and find that paragraph 16 (1)(b) applies to the majority of the information in these Records for the following reasons.

a. The emails contain communication between employees of the Department and Environment.

b. A majority of the information in the emails are communications between these employees about development of the communications plan that was included in the Cabinet submission.

c. In the emails, the views of one or more employees is sought as to the appropriateness of particular proposals or suggested actions in relation to the communications plan. There is also discussion or consideration about suggested courses of action or proposals with reasons for and against the same.

d. The majority of the emails were exchanged between employees who work in communications for either the Department or Environment and appear, based on the conversations, to have had responsibility for formulating the communications plan.

e. Some emails included employees who appear, based on their titles, to have responsibilities beyond purely communications planning. However, based on the conversations, these employees played a role in the planning.

[46] Given my finding above, I will not go on to consider if paragraph 16 (1)(a) also applies.

[47] There is some information that paragraphs 16 (1)(a) or (b) do not apply to in Records 007, 008 and 010 to 022. The information is primarily greeting statements, such as “hi” and a person’s name or sign-off statements such as “thanks” together with the names of these employees. To assist the Department, in identifying the information that it is not authorized to exempt, under these paragraphs, I provided them with a copy of the Records containing my instruction.

[48] Subsection 16 (2) contains a number of circumstances that require the Department not to refuse access to information under subsection 16 (1). Having reviewed those circumstances, I find that none apply to the information in Records 007, 008, and 010 to 022. I also find the Records have not been in existence for 15 or more years. Given this, I find that subsection 16 (3) does not apply to the information contained in the Records.

Applicability of Subsection 25 (1)

[49] Given that I am instructing the Department to release the names of employees, I will address why these names do not fall under the mandatory exception in subsection 25 (1).

[50] Names of employees are their personal information as defined in the ATIPP Act. I have found in prior decisions[15] that the name of a public body' employee included in a record of their work for the public body will not be an unreasonable invasion of their personal privacy if released to an applicant.

Exercise of Discretion

[51] In Inquiry Report ATP16-031AR,[16] I identified the test for the exercise of discretion by a public body and the role of the IPC in reviewing the exercise of discretion as follows.

a. The public body must first determine if the exception applies. If so, it must then decide whether to disclose the record or information having regard to all the relevant interests.

b. The IPC must determine whether the exemption was properly claimed by the public body. If so, the IPC must determine whether the exercise of discretion was reasonable.

[52] Based on the facts in this Inquiry, the Department determined that paragraphs 16 (1)(a) and (b) applied to the information contained in Records 007, 008, and 010 to 022.

[53] In terms of its exercise of discretion related to these Records, it indicated in its submission that "Community Services management decided discussions between managers, regarding employee performance with possible discipline, are to be withheld to encourage documentation of such discussions."

[54] I have already found that the Department is authorized by paragraph 16 (1)(b) to refuse access to Records 007, 008, and 010 to 022. Based on the submission of the Department about its exercise of discretion, I am satisfied that it considered relevant interests in deciding to refuse access to these Records. I am, therefore, satisfied that its exercise of discretion to refuse access to the information contained in the Records was reasonable.

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[15] Inquiry Report ATP16-031AR, Department of Environment, September 18, 2017 (YK IPC), at para. 306.
[16] Inquiry Report ATP16-031AR, Department of Environment, September 18, 2017 (YK IPC), at para. 81 citing Inquiry Report ATP11-029AR, Department of Energy, Mines and Resources, August 14, 2013 (YT IPC), at paras 37 and 38, citing *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23.

IX FINDINGS

[55] On issue one, I find that the Department is authorized by paragraph 15 (1)(b) of the ATIPP Act to separate or obliterate all the information in Records 001 to 006.

[56] One issue two, I find that the Department is authorized by paragraph 16 (1)(b) of the ATIPP Act to refuse the applicant access to most of the information contained in Records 007, 008, and 010 to 022; with the exception of the small amount of information I found therein that these paragraphs do not apply to.

X RECOMMENDATIONS

[57] On issue one, I affirm that the Department should continue to refuse the Applicant access to the information in Records 001 to 006.

[58] On issue two:

a. I affirm that the Department should continue to refuse the Applicant access to the information in Records 007, 008, and 010 to 022 that I found paragraph 16 (1)(b) applies to; and

b. I recommend that the Department provide the Applicant with access to the information in Records 007, 008, and 010 to 022 that I identified paragraph 16 (1)(b) and subsection 25 (1) does not apply to.

XI PUBLIC BODY'S DECISION AFTER REVIEW

[59] Section 58 of the Act requires the Department to decide, within 30 days of receiving this Inquiry Report, whether to follow my recommendations. The Department must give written notice of its decision to me and the parties who received a copy of this report, noted on the distribution list below.

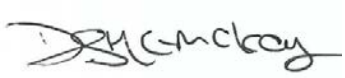
[60] If the Department does not give notice of its decision within 30 days of receiving this report, it is deemed to have refused to follow my recommendations.

[61] If the Department does not follow my recommendations, it must inform the Applicant, in writing, of the right to appeal that decision to the Yukon Supreme Court.

XII APPLICANT'S RIGHT OF APPEAL

[62] Paragraph 59 (1)(a), gives the Applicant the right to appeal to the Yukon Supreme Court when the Department does not follow my recommendation to give the Applicant access to part of a record.

[63] Paragraph 59 (1)(b) gives the Applicant the right to appeal to the Yukon Supreme Court when my determination that the Department is required to refuse to give access to part of the record.



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Diane McLeod-McKay, B.A., J.D.
Information and Privacy Commissioner

Distribution List:

- Public Body
- Applicant
- Records Manager