



Department of Economic Development
PO Box 2703 (F-1), Whitehorse, Yukon Y1A 2C6

0252-25-09
ATP-ADJ-2022-04-133

Sent by SFT

November 17, 2022

To: Applicant/Complainant:

RE: IPC INVESTIGATION REPORT ATP-ADJ-2022-04-133, OCTOBER 26 2022

I write to provide you notice of my decision in response to Adjudicator's Smith's recommendations of October 26, 2022 contained in the above referenced investigation report. I have considered the report and the recommendations and this reply constitutes my notice in accordance with s.104 that I have accepted some and rejected some for the reasons given below.

Re Recommendation 1, Record 2

I accept this recommendation.

Re Recommendation 2, Record 3

I accept this recommendation in part. The financial information on page 7 will not be disclosed for all of the reasons already given.

Regarding signatures, which appear on page 10 of this record, I respectfully disagree with Adjudicator Smith's assessment that the signatures contained in the records should be released on the basis that they do not constitute personal information because they are being used in their representative capacity on behalf of either the public body or a business. In my view, an individual's signature is, and remains, their personal information on the basis of all the reasons I've set out in responses to this matter and the view expressed by the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)* 1997 CanLII 258(SCC), [1997] 2SCR 403. An individual's signature is not merely their name, it is in and of itself a unique identifier. As Adjudicator Smith is no doubt aware, despite him having a common last name, his signature is unique to him, and serves to distinguish him from all other Rick Smiths.

As personal information, consideration must be given to whether disclosure of it in this case would constitute an unreasonable invasion of the individual's privacy. No notices were sent to consult with the civil servants about the potential disclosure of their personal information in this matter, nor were any sent to the individuals who act as the directing minds of their corporations, because the public body is of the view that disclosure would be an unreasonable invasion of privacy. Without their views on this matter, I have determined that I

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must act to protect their privacy interests. Disclosing an individual's signature may not be an unreasonable invasion of their personal privacy in particular circumstances. However, it is my view that in these circumstances the signatures of the civil servants and business representatives should not be disclosed because to do so would be an unreasonable invasion of their privacy taking into consideration the totality of the circumstances and for all the reasons previously given. As a result I reject the recommendation to disclose individual's signatures found in the responsive records.

Re Recommendation 3, Record 4

I agree with Adjudicator Smith's assessment that the redacted information is commercial in nature (see para 183). I disagree with his assessment that the head did not have sufficient evidence upon which to make their decision that similar information would reasonably be expected to no longer be provided in the future. I am rejecting this recommendation for all of the reasons previously given.

Re Recommendation 4, Record 5

I accept this recommendation.

Re Recommendation 5, Record 6

I accept Adjudicator Smith's determination that the redacted information in Record 6 does not all constitute advice or recommendations and I accept his recommendation to disclose it. In fact, that information has previously been disclosed as part of this complaint process before the IPC. However, to be clear, other redactions will remain because that information is not responsive to the Applicant's revised request as set out in the Investigation Report because it is about other funding applicants.

Re: Recommendation 6, Record 7

I agree with Adjudicator Smith's assessment of this record and that much of it will be disclosed. However, certain limited redactions will remain because that information is not responsive to the Applicant's revised request as set out in the Investigation Report and it identifies other funding applicants whose interests have not been considered. As a result, that information will not be disclosed to the Applicant.

Re Recommendation 7, Record 8

I accept this recommendation with one exception. For the reasons given above I reject the recommendation to disclose the two individual's signatures on page 41. In my view, those signatures remain the personal information of the individuals despite their roles in the civil service. I have concluded that in the totality of the circumstances disclosure of these signatures attached to this document would constitute an unreasonable invasion of their personal privacy. They will remain redacted.

Re Recommendation 8, Record 9

I accept this recommendation.

Re Recommendation 9, Record 10

I accept Adjudicator Smith's recommendation to extract any information that is financial because it is outside the scope of the revised request. That information will remain redacted. I also accept the recommendation to disclose the peer review comments on page 48.

I reject Adjudicator Smith's recommendation to disclose

- the name of the individual and the business in page 46; and
- the business planning information on page 47, for all the reasons previously given.

I also reject Adjudicator Smith's recommendation to disclose the signatures of the three civil servants on page 45 because I am of the view that they remain the personal information of those signatories and in the circumstances disclosure would constitute an unreasonable invasion of their privacy for all the reasons already given in this response.

One of those signatures is my own, and I have considered whether it is a conflict of interest for me to make a determination of this nature regarding what I consider to be my own personal information. I have determined that it is not a conflict of interest for me to make this determination.

Re Recommendation 10, Record 12

I reject this recommendation for all the reasons previously given.

Re Recommendation 11, Record 13

I accept this recommendation.

Re Recommendation 12, Record 14

I largely accept this recommendation. To ensure that the information does not serve to identify the individual writers (and thus be their personal information) the personal names on page 54 and 55 will continue to be redacted. The numeral on page 54 representing the number of years the writer has lived in the community will be redacted.

I reject the recommendation to the extent that it recommends disclosure of the name of the business and individual on page 55 for all the reasons previously given.

I also reject Adjudicator Smith's recommendation to disclose the signatures on page 45 because I am of the view that they remain the personal information of those signatories and in the circumstances disclosure would constitute an unreasonable invasion of their privacy for all the reasons already given in this response.

You may apply to the Supreme Court of Yukon for a review of my decision in accordance with section 105 of the ATIPP Act.

In accordance with my decision, the amended redacted records will be forwarded to you within 15 business days.

Sincerely,


Justin Ferbey
Deputy Minister
Economic Development

cc: Mr. Jason Pedlar
Information & Privacy Commissioner