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Nunavut Information and Privacy Commissioner
Nunavunmi Tuhaqtauyukhaliqinirmun Kanngunaqtuliqinirmun Kamisina
Commissaire à l'information et à la protection de la vie privée du Nunavut

Commissioner's Final Report

Report Number:	21-204-RR
CanLII Citation:	Department of Justice (Re), 2021 NUIPC 23
NUIPC File Number(s):	21-147
GN File Number(s):	1029-20-JUS23125
Date:	August 3, 2021

Summary

[1] The Applicant requested records about a fire at the Baffin Correctional Centre in Iqaluit. The Department of Justice disclosed 800 pages of records, with extensive redactions. The Applicant asked the Commissioner to review the redactions. The Commissioner makes recommendations for further disclosure, and recommends the department show how it exercises its discretion for discretionary exemptions.

Nature of Review and Jurisdiction

[2] The Applicant requested, under s 28(1) of the Access to Information and Protection of Privacy Act (ATIPPA), that I review disclosure from the territorial Department of Justice. I conducted my review under s 31(1).

[3] The Commissioner has jurisdiction over the territorial Department of Justice: ATIPPA, s 2, definition of "public body".

Issues

[4] The issues in this review are:

a. Did the Department of Justice correctly apply the exemption in s 15?
b. Did the Department of Justice correctly apply the exemption in s 20(1)(a)?
c. Did the Department of Justice correctly apply the exemption in s 20(1)(k)?
d. Did the Department of Justice correctly apply the exemption in s 23?
e. Did the Department of Justice exercise its discretion for the discretionary exemptions?

Facts

[5] On March 18, 2021, there was a fire at the Baffin Correctional Centre (BCC) in Iqaluit. All inmates were evacuated. The damage was serious enough that alternative accommodation had to be found for all inmates. Many were transferred to prisons outside Nunavut. It was many weeks before the BCC was repaired and able to accept inmates again.

[6] Shortly after the fire, the Applicant filed a request for information. There was some discussion with the department about the wording of the request. In the end, the Applicant requested "All records pertaining to a fire at the Baffin Correctional Centre, including emails, reports, drafts, memos, photos, including all records pertaining to the relocation of inmates, created between the dates of March 18 and March 24, 2021".

[7] The Department of Justice disclosed 800 pages of records, many of them heavily or entirely redacted. The Applicant requested review of the redactions.

[8] In accordance with the usual practice, I received from the department unredacted copies of the records for purposes of my review.

Law

[9] The Department of Justice has applied four different exemptions to the responsive documents: sections 15(1)(a), 20(1)(a), 20(1)(k), and 23. The great majority of the redactions are claimed under s 23.

Section 15(1)(a)

[10] One document is redacted under section 15(1)(a). That section reads as follows:

> 15. (1) The head of a public body may refuse to disclose to an applicant
>
> > (a) information that is subject to any type of privilege available at law, including solicitor-client privilege; ….

[11] The test for solicitor-client privilege is well-known, and has been applied numerous times by the former Commissioner and by me, most recently in *Nunavut Arctic College (Re)*, 2021 NUIPC 17 (CanLII). In that case, at paragraph 14, I summarized the law in this way: "…a confidential communication between a lawyer and the lawyer's client, that relates to seeking, formulating, or giving legal advice, is exempt from disclosure."

Section 20(1)(a)

[12] The exemptions rationale says that three pages have been redacted under section 20(1)(a). Section 20(1)(a) reads as follows:

> 20. (1) The head of a public body may refuse to disclose information to an applicant where there is a reasonable possibility that disclosure could
> (a) prejudice a law enforcement matter; ….

The phrase "law enforcement", which appears in section 20(1)(a), is defined in section 2:

"law enforcement" includes

(a) policing, including criminal intelligence operations,

(b) investigations that lead or could lead to the imposition of a penalty or sanction, or

(c) proceedings that lead or could lead to the imposition of a penalty or sanction; ….

[13] The key phrase in this exemption is "reasonable possibility". What kind of evidentiary threshold does that set? In other words, what does the public body have to show in order to correctly apply one of the exemptions in section 20?

[14] The phrase "reasonable possibility" has not been considered in detail in previous Nunavut cases. In a series of three related decisions touching on section 20(1)(a), the former Commissioner found that a reasonable possibility is "genuine and conceivable" and "there must be a connection between the disclosure of the specific information and the prejudice alleged": see, for example, *Review Report 17-131 (Re),* 2017 NUIPC 18 (CanLII). In *Review Report 17-132 (Re),* 2017 NUIPC 19 (CanLII), the former Commissioner added "It is certainly not sufficient that the matter merely 'relate to' a law enforcement matter."

[15] The phrase "reasonable possibility" does not occur anywhere else in the ATIPPA. In contrast, the phrase "can reasonably be expected to" is used extensively in the ATIPPA, in sections 14, 16, 17, 18, 19, 20(2), 20(4), 21, 23(2)(i), 24, 25.1 and 73(e). It is a well-established principle of statutory interpretation that different words should normally be given a different meaning. The fact that "reasonable possibility" is used only once suggests the legislature intended it should have a meaning different from "can reasonably be expected to". But what could the difference be?

[16] The phrase "can reasonably be expected to", or its grammatical cognate "reasonable expectation", occurs in freedom of information legislation across Canada, and has been interpreted by courts up to and including the Supreme Court of Canada.

[17] In *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* 2014 SCC 31 (CanLII), [2014] 1 SCR 674, at paragraph 54, the Supreme Court found that "reasonable expectation" stakes out a middle ground between the possible and the probable:

> This Court in *Merck Frosst* adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the "could reasonably be expected to" language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences": *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at para. 40.

[18] The phrase "reasonable possibility" has been used and interpreted in a wide variety of contexts in Canadian law: see, for example, *R. v. Stinchcombe*, 1991 CanLII 45 (SCC), [1991] 3 SCR 326 (disclosure in criminal law); *Theratechnologies Inc. v. 121851 Canada Inc.*, 2015 SCC 18 (CanLII), [2015] 2 SCR 106 (threshold for shareholder action for damages); *Adjei v. Canada (Minister of Employment and Immigration)*, 1989 CanLII 5184 (FCA), [1989] 2 FC 680 (claim for refugee status).

[19] In whatever context it is used, "reasonable possibility" lies somewhere between a bare possibility and a probability. In *Theratechnologies*, for example, Abella J. for a unanimous Supreme Court of Canada found that the "reasonable possibility" threshold for authorizing a shareholder action was "a different and higher standard" than the general threshold for a class action. It should be "more than a 'speed bump'" and requires a reasoned consideration of the evidence to ensure the action has some merit. This requires the claimant "to offer both a plausible analysis of the

applicable legislative provisions, and some credible evidence in support of the claim."

[20] It is difficult to see much difference between "reasonable expectation" and "reasonable possibility", as interpreted by the Supreme Court of Canada. Perhaps there really is, for purposes of the Nunavut ATIPPA, little or no difference.

[21] For present purposes, I will apply an interpretation of "reasonable possibility" like the one in *Theratechnologies*. At the same time, I will be mindful that the amount and quality of evidence depends on the context, as stated in *Ontario (Community Safety and Correctional Services).* Section 20 should be more than a speed bump for the public body. A public body wanting to claim an exemption under s 20 must offer both a plausible analysis of the exemption, and some credible evidence in support of its application of the exemption. For s 20(1)(a), the public body does not have to prove that prejudice to a law enforcement matter is more likely than not, but it does have to show more than a speculative possibility.

Section 20(1)(k)

[22] Three pages of the disclosure have redactions based on section 20(1)(k). That section reads as follows:

> 20. (1) The head of a public body may refuse to disclose information to an applicant where there is a reasonable possibility that disclosure could
>
> …
>
> (k) prejudice the security of any property or system, including a building, a vehicle, a computer system or a communications system; ….

[23] The explanation I have just given of "reasonable possibility" under s 20(1)(a) applies equally to s 20(1)(k). A public body wanting to claim an exemption under s 20 must offer both a plausible analysis of the exemption, and some credible evidence in support of its application of the exemption. For s 20(1)(k), the public body does not have to prove that

prejudice to the security of a property or a system is more likely than not, but it does have to show more than a speculative possibility.

Section 23

[24] Section 23 is probably the most frequently-cited ATIPPA exemption in Nunavut, and it is also the most difficult to apply correctly. It is too long to reproduce here in full. The first subsection reads as follows:

> 23. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

[25] The third subsection is also relevant to every instance in which s 23 is applied (I have added the underlining):

> (3) In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Nunavut or a public body to public scrutiny;
> (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment;
> (c) the personal information is relevant to a fair determination of the applicant's rights;
> (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;
> (e) the third party will be exposed unfairly to financial or other harm;
> (f) the personal information has been supplied in confidence;
> (g) the personal information is likely to be inaccurate or unreliable; and
> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

[26] I have previously outlined the correct interpretive approach to section 23: *Department of Human Resources (Re)*, 2021 NUIPC 4 (CanLII) at paragraphs 21 and 22. I do not propose to repeat the full analysis here. The essence is that subsections (1), (2) and (3) of section 23 always have

to be read together. It is only subsection 23(4) that can be applied on its own, and that subsection is not relevant to this case.

Analysis

[27] I will begin with some general comments about the department's explanation of its redactions. I will then consider the four exemptions claimed by the department.

The department's explanation

[28] Along with the records themselves, the Department of Justice provided to the Applicant an "exemptions rationale". This document is an explanation of which redactions are claimed, and why. It is less than two pages long. The department's explanations are, to put it gently, terse.

[29] After the Applicant requested review, I invited the department to make any additional submissions it wished to make. The department provided to me the same "exemptions rationale" document it provided to the Applicant. The department advanced no additional reasons for its redactions.

[30] When exemptions are claimed, a public body must tell an applicant "the reasons for the refusal and the provision of this Act on which the refusal is based": ATIPPA, s 9(1)(c)(i). In my view, a meaningful explanation of the reasons must contain at least the following information:

a. A description of the redaction, usually by page number. (These can be grouped together, but only if the reasons are in all other respects identical.)

b. The section number(s) of the ATIPPA containing the specific exemption on which the redaction is based.

c. A narrative explanation of the public body's thought process about why the exemption applies.

d. In the case of a discretionary exemption, a narrative explanation of the public body's thought process about why discretion has been exercised for or against disclosure.

(By way of explanation for the fourth item, a discretionary exemption is one where the ATIPPA says the public body "may" claim an exemption. A mandatory exemption is one where the ATIPPA says the public body "shall" claim an exemption. Most exemptions in the ATIPPA are discretionary. A public body has a duty to "actively exercise" its discretion: see *Department of Health (Re),* 2021 NUIPC 12 (CanLII) at paragraph 15.)

[31] In this case, the department's exemptions rationale contains the first two elements, but very little on the third and nothing on the fourth. The department's explanations do not satisfy the department's duty under section 9 of the ATIPPA to provide meaningful reasons. I will return to this topic below, in my analysis of each exemption.

Section 15(1)(a) – solicitor-client privilege

[32] There is one document for which the department claims an exemption under s 15(1)(a). The exemption is for solicitor-client privilege. The document is repeated several times in the disclosure, and is redacted the same way each time.

[33] I call it a "document", but really it is just a block of text. The block of text is appended to an email from the deputy minister to four GN employees. The deputy minister's email, which is not redacted, reads as follows: "Hi Everyone. I asked legal for some tips on the current transfer. See below all good advice to keep in mind during our discussions with [Correctional Services Canada] and [Public Prosecution Service of Canada]. I'm sure much of this is not news and already in place. Thanks." There then follows the redacted block of text.

[34] Unfortunately, there is no other context given for the redacted block of text. On its face, the block of text has no title, author, or date. The deputy minister appears to have cut-and-pasted it from another document. The

only clue about its origin is the deputy minister's statement "I asked legal for some tips."

[35] In the exemptions rationale, the department explains its redaction this way: "This information is a summary of a legal opinion provided by a Government of Nunavut Lawyer and constitutes as legal advice."

[36] In my view, the phrase "I asked legal for some tips" is not sufficient to establish the existence of a solicitor-client relationship for this block of text. The onus of proof is on the department. The way the block of text is presented in the records, combined with the department's terse explanation, does not meet the threshold for redaction.

[37] Although I could have recommended disclosure based solely on the thinness of the evidence, I hesitated to do so. Solicitor-client privilege is "fundamental to the proper functioning of our legal system": *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 (CanLII) at paragraph 20. I therefore asked the department for further explanation of the circumstances of the creation of this block of text.

[38] The department replied with an explanation of who wrote it and when, as well as some other context related to its creation. This information should have been included in the department's exemptions rationale, and I encourage the department to do so in future.

[39] Based on this additional explanation, I am satisfied that solicitor-client privilege applies to the redacted block of text, wherever it appears.

[40] There is one more issue to address concerning solicitor-client privilege. Section 15 is a discretionary exemption. That means a public body may release information, even if it otherwise fits within section 15. The public body is required to explain why it has exercised its discretion the way it has: *Department of Health (Re),* 2021 NUIPC 12 (CanLII) at paragraph 15. Section 15 has a unique process, in subsections (2) and (3), for waiving the privilege and releasing the information.

[41] The department's "exemptions rationale" includes a sentence which may be directed at the question of discretion: "The Department of Justice will be maintaining its solicitor client privilege in this matter." If that is intended to address the question of discretion, it is not sufficient. It is a conclusion, not a reason. We already know the department is refusing to release the document. What we need to know is why.

[42] I have had the advantage, as I do in all cases, of being able to review the unredacted documents. I have read the redacted block of text. It contains sensible advice that would apply equally to any similar future situation in which prisoners have to be moved out of the territory on short notice. There is nothing in it that is controversial or confidential. There is no litigation. Nobody could gain any advantage from seeing it. It is hard to imagine the GN suffering any prejudice by releasing it. As the deputy himself wrote, "I'm sure much of this is not news and already in place."

[43] If the department declines to exercise its discretion to release this particular document, that would suggest to me that the department is following a policy that solicitor-client privilege will never be waived. If that is the department's policy, it is legally wrong. It is the legislature that decides which exemptions are discretionary, and the legislature has decided that section 15 is discretionary. The department cannot, through administrative policy, turn a discretionary exemption into a mandatory exemption: see *Department of Human Resources (Re)*, 2021 NUIPC 14 (CanLII) at paragraph 72.

Section 20(1)(a) – general comments

[44] According to the exemptions rationale, there are three pages of the disclosure (pages 50, 61 and 82) that are redacted under section 20(1)(a). The disclosure documents suggest that this exemption is being applied more widely:

a. Pages 1 to 19, 412, 414, 416 and 417 say on their face that they were redacted under section 20(1)(a). The exemptions rationale lists them under section 23.

b. Pages 288, 289, 419 and 420 say on their face that they were redacted under both section 20(1)(a) and section 23. The exemptions rationale lists them only under section 23.

[45] The distinction matters because section 23 would typically justify a more targeted redaction, sufficient only to protect against an unreasonable invasion of personal privacy. Section 20(1)(a), in contrast, may justify redaction of longer passages or whole documents. Another difference is that section 20 is a discretionary exemption, while section 23 is a mandatory exemption.

[46] I am prepared to assume that the department intended to claim both exemptions for pages 1 to 19, 412, 414, 416 and 417, just as it did for pages 288, 289, 419 and 420.

[47] I caution the department, and indeed all public bodies, to take care in future that the exemptions rationale matches the disclosure documents. Otherwise there is a risk of confusion, error, and delay.

[48] The department states in its exemption rationale "This information is related to an active RCMP investigation and to release this information would prejudice law enforcement matters." That is the entire explanation.

[49] Again, such a terse explanation is not sufficient to meet the department's duty to give meaningful reasons to an applicant. The first part of the sentence is a factual statement, but no evidence is offered to support it. The second part of the sentence is a conclusion, not a reason. The department does not explain how releasing this information would create a "reasonable possibility" of prejudice to the investigation, as required by s 20(1)(a).

[50] Under the ATIPPA, the onus of proof for a section 20 exemption is on the public body. As discussed in the Law section above, the threshold in section 20 is a "reasonable possibility", and that requires a plausible analysis of the exemption, and some credible evidence in support of the exemption. Section 20(1)(a) cannot apply when there is no evidence advanced by the public body respecting prejudice to the law enforcement matter: *Review Report 15-088 (Re)*, 2015 NUIPC 1 (CanLII).

[51] The disclosure contains documents indicating that the RCMP did immediately undertake an investigation into the BCC fire. I am prepared to assume that as a fact. What I do not know, and am not prepared to assume, is whether the investigation was still ongoing at the time of disclosure, which is the relevant date for the application of s 20(1)(a). More importantly, I have before me no analysis of how prejudice might occur, and I have before me no evidence at all, whether inside or outside the disclosure package, to support a "reasonable possibility" of prejudice. I will not speculate, and I should not have to.

[52] There is another reason why the department should, in my view, be held strictly to its onus of proof when claiming an exemption under s 20(1)(a).

[53] The RCMP does not always confirm that an investigation is underway. Even if they do, the public does not know when, if ever, charges will be laid. (In the present case, the most likely offences in the Criminal Code for a deliberately-set fire are indictable offences, so there is no limitation period for the laying of charges.) The RCMP does not routinely give updates on its investigations, nor does it routinely announce when an investigation is concluded. And that is to say nothing about a possible trial and appeal, which might also be "law enforcement matters".

[54] Suspending ATIPP disclosure until a "law enforcement matter" is concluded could delay disclosure for years. That would be a "black hole" into which too much information could disappear: see *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII) at paragraphs 51-54; *Department of Health (Re)*,

2021 NUIPC 7 (CanLII) at paragraph 42. It would effectively defeat the purpose of the ATIPPA.

[55] For these reasons, all of the information redacted under section 20(1)(a) should be disclosed, unless it is exempt under s 23. I will consider that possibility later in this decision.

Section 20(1)(k) – security of a building or system

[56] Small portions of three documents are redacted under s 20(1)(k). They are on pages 54, 81 and 127.

[57] The legal test is explained in the Law section above. The onus is on the department to show a reasonable possibility of prejudice. As explained in the Law section, that requires both a plausible analysis of the exemption, and some credible evidence in support of its application of the exemption.

[58] The department states in its exemption rationale "This information is sensitive in nature and to release this information would compromise the security of the building should this information be made public." That is the entire explanation. The department does not indicate why the information is sensitive, or how releasing the information could compromise the security of the building.

[59] Section 20(1)(k) cannot apply when there is no evidence advanced by the public body respecting prejudice to a property or a system. For this reason alone, I cannot uphold the s 20(1)(k) redactions. The information should be disclosed.

[60] In any event, the information redacted under s 20(1)(k) does not, even on its face, satisfy the conditions for the exemption.

[61] The redactions on pages 54 and 81 are the same. There is a sentence about repairs to the BCC. I do not see how the release of this statement could prejudice the security of the building. If anything, it would tend to do the opposite. This information should be disclosed.

[62] The redaction on page 127 is in an email between a city official and a GN official. The city official states the name of a city building that could be made available for temporary housing of inmates. Only the name of the building is redacted. This building was never used. I do not see how disclosing the name of the building, long after the offer was declined, creates a reasonable possibility of prejudice to the security of that building. This information should be disclosed.

Section 23 – general comments

[63] The great majority of the redactions are claimed under section 23. That is because the fire required the relocation of all inmates, and relocation required a great deal of paperwork to support travel and transfer. The paperwork includes a substantial amount of personal information about each inmate.

[64] As I have explained in the Law section above, s 23 is the most difficult ATIPPA exemption to apply. There are many moving parts in the interpretation of s 23. Applying it properly requires careful attention to detail.

[65] In the exemptions rationale, the department says this about the information redacted under section 23: "This information is the personal information of inmates and a third party. To release this information would be an unreasonable breach of their personal information." That is the entire explanation for hundreds of separate redactions. What about the guards? Who is the third party? What are the relevant circumstances? Why would releasing it be an unreasonable invasion of personal privacy? None of this is explained.

[66] In the context of a quasi-constitutional right of access, a terse two lines purporting to cover hundreds of redactions on a matter of public interest does not meet the department's statutory duty to explain the redactions it has made.

[67] However, s 23 is, unlike the others I have been considering, a mandatory exemption. If information fits within s 23, it must be withheld. Although the department has advanced no analysis of s 23 or offered any argument as to why disclosure would be an unreasonable invasion of personal privacy, I feel bound to review the information to see if it must be withheld.

Section 23 – categories of exemptions

[68] Many of the redactions applied by the department under section 23 fall into the following categories:

a. Any mention of an inmate's name, in any context, along with any accompanying information.

b. Inmate numbers, even without an associated name (e.g. page 442).

c. Certain telephone numbers, such as cell numbers or direct numbers (e.g. pages 296, 332, 344).

d. Names and personal information about guards who were on duty when the fire started (e.g. pages 412, 414).

e. Any non-work-related information about correctional staff (e.g. page 217).

[69] I find, having considered all the relevant circumstances, that s 23 was correctly applied to all of these categories.

[70] With respect to the personal information of inmates, my reasoning is as follows, taking all relevant circumstances into account as required by s 23(3):

a. None of the circumstances in subsections 23(2) or (4) apply in this case.

b. The focus of Part 1 of the ATIPPA is on holding the GN to account, not holding inmates to account. The activities of the GN with respect

to the BCC fire may be subjected to scrutiny without releasing personal information about the inmates.

c. Inmates are a vulnerable population who have little or no choice about the collection and use of information about them within the correctional system.

[71] With respect to inmate numbers, an identifying number is also "personal information": ATIPPA, s 2, definition of "personal information", paragraph (d). That does not mean, however, it is automatically exempt from disclosure under s 23. I would have liked to see more from the department about why a number without a name is an unreasonable invasion of personal privacy. In this case, I am prepared to assume that it is, but I do not lay that down as a general rule.

[72] With respect to telephone numbers, it is well-established that business telephone numbers of GN employees (and others) should generally be disclosed, but personal numbers and cell phone numbers are more personal in nature and need not be disclosed. The department has applied that distinction consistently and correctly.

[73] With respect to the names of guards on duty at the time of the fire, I have previously found that the names of GN employees who are going about their business should generally be disclosed: *Department of Health (Re),* 2021 NUIPC 12 (CanLII) at paragraph 78; *Nunavut Arctic College (Re),* 2021 NUIPC 17 (CanLII) at paragraph 31. However in the context of prison security, and in the context of a list that puts guards in a certain place at a certain time, the considerations are different. I find that the guards' names may be redacted. That is sufficient to cover the redactions on pages 412, 414, 416, 417, 419 and 420. It goes without saying that the guards' birthdates are also personal information, and should also be redacted.

[74] With respect to non-work-related information about guards, personal information about GN employees need not be disclosed, provided it is of

little or no relevance to the matters being discussed: *Department of Human Resources (Re)*, 2021 NUIPC 4 (CanLII) at paragraph 25. This consideration would, in my view, be particularly pertinent to staff working within the correctional system. The references to personal information of staff were correctly redacted.

Section 23 – incident reports

[75] Pages 1 to 19: These pages have been redacted in full, except for the header and footer on each page. I have had the advantage of reviewing the unredacted document. I need only say that the document is a collection of incident reports from the staff on duty when the fire started. Each report states what the author did and what they saw.

[76] In my view, s 23 can correctly be applied to redact the names of the guards giving the report, and the names of other guards and inmates. Other than that, the information in the incident reports is not personal information and should be disclosed.

[77] The net of s 23 should not be cast too wide. Disclosure is desirable for the purpose of subjecting the GN to scrutiny. I am prepared to take notice of the fact that fire safety in the BCC has previously been the subject of public attention. Moreover, a substantial expense must have been incurred to repair the BCC, and to transport and house the inmates elsewhere. There is a public interest in knowing the cause of the fire and whether there is something about the BCC that made it susceptible to this sort of fire. I note also that the remaining life of the BCC, at least as a prison, is short. Its replacement is under construction and is expected to open soon. There is a public interest in knowing what lessons have been learned from the BCC fire. This is an area in which mistakes can be costly and, in the worst-case scenario, fatal. Of all the documents in the 800-page disclosure package, pages 1 to 19 are most likely to provide information that will make a constructive contribution to public knowledge and debate.

Section 23 – remaining redactions

[78] That leaves a few redactions that do not fit in any of the categories already mentioned.

[79] On page 54, a reference to a young offender is redacted, even though there is no name or other identifying information. I certainly support the idea that the identity of minors should almost always be protected: *Nunavut Arctic College (Re)*, 2021 NUIPC 17 (CanLII) at paragraph 32. I do not, however, understand how this sentence, which contains no identifying information, could be or become personal information about an "identifiable individual", as required by the definition of "personal information". It should be disclosed.

[80] On pages 114 and 116, call-in information for a Microsoft Teams meeting is redacted under section 23. This is not personal information about an identifiable individual, so section 23 cannot apply: see *Department of Health (Re)*, 2021 NUIPC 12 (CanLII) at paragraphs 86-88. If the information is sensitive, the department does not indicate why. It should be disclosed.

[81] On page 195, the name and contact information for the hotel where staff stayed while in Yellowknife is redacted. This is not personal information about an identifiable individual, so section 23 cannot apply. If the information is sensitive, perhaps because corrections staff always stay at the same hotel, the department needs to find a different exemption. Failing that, it should be disclosed.

Conclusion

[82] The Department of Justice correctly applied the exemption in s 15(1)(a).

[83] The Department of Justice did not correctly apply the exemption in s 20(1)(a).

[84] The Department of Justice did not correctly apply the exemption in s 20(1)(k).

[85] The Department of Justice correctly applied the exemption in s 23 in most instances, but there are some instances where it did not.

[86] The Department of Justice did not exercise its discretion for the discretionary exemptions.

Recommendations

[87] **I recommend** to the Department of Justice, and also to the Territorial ATIPP Coordinator for dissemination to all ATIPP Coordinators, that "exemption rationales" include at least the information outlined in paragraph 30 of this Review Report.

[88] **I recommend** that the information redacted on the following pages be disclosed:

a. The information on pages 50, 61 and 82 redacted under s 20(1)(a).

b. The information on pages 54, 81 and 127 redacted under s 20(1)(k).

c. The information on pages 1 to 19, other than the names of guards and inmates, which may be redacted under s 23.

d. The information on pages 54, 114, 116 and 195 redacted under s 23, as discussed in paragraphs 78 to 81.

[89] For the information that I have found to be correctly redacted under sections 15(1)(a), and for any information redacted under ss 20(1)(a) or 20(1)(k) for which the Department of Justice does not accept my recommendation for disclosure, **I recommend** that the Department of Justice consider how to apply its discretion to that information.

Graham Steele
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