

[3] I have jurisdiction over the Nunavut Housing Corporation: ATIPPA, s 2, definition of “public body”; ATIPP Regulations, s 1(2)(a) and Schedule A, column 1, item 9.

Issues

- [4]** The issues in this review are:
- a. Did NHC correctly apply the exemption in section 14?
 - b. Did NHC correctly apply the exemption in section 15?
 - c. Did NHC correctly apply the exemption in section 17?
 - d. Did NHC correctly apply the exemption in section 23?
 - e. Did NHC correctly apply the exemption in section 24?
 - f. Did NHC correctly exercise its discretion to disclose?

Facts

- [5]** The Nunavut Housing Corporation (NHC) is a government entity with wide responsibility for housing. It is established under and governed by the *Nunavut Housing Corporation Act*, RSNWT 1988, C N-1 (Nunavut). It builds, owns and manages a substantial portfolio of residential properties throughout the territory.
- [6]** Most housing construction projects planned for 2021 went ahead, but three (in Taloyoak, Iqaluit and Pangnirtung) were cancelled.
- [7]** On September 14, 2021, the Applicant wrote to NHC requesting the following records:
- a. All Tender Register forms for new-build construction projects with a closing date listed in 2021.
 - b. All records detailing the cancellation of 2021 new-build construction projects.
 - c. All communications involving NHC employees relating to the cancellation of tenders and construction projects for 2021.

- d. A list of any new-build housing project slated for construction in 2021, whether or not put out to tender.

[8] On October 28, 2021, NHC responded with some records and a covering letter. NHC disclosed the following:

- a. The Tender Register form for awarded and cancelled construction projects, but not withdrawn bids.
- b. Three documents, totalling eleven pages, described by NHC as “briefing notes”. One was heavily redacted, one was partly redacted, and one was unredacted. The redactions were claimed under sections 14 and 23 of the ATIPPA.

In this decision, I will refer to these documents as “the initial disclosure package”. NHC also mentioned that it had collected some responsive e-mails, but withheld them all. I will refer to this second set of documents as “the e-mail package”.

[9] On October 29, 2021, the Applicant requested that I review NHC’s disclosure. The Applicant framed their request in this way:

As you’ll note from the wording throughout the request, the underlying topic of the search is related to cancelled tenders from the 2021 construction season.

According to what was provided from the Nunavut Housing Corporation in its response to my request, three tenders for new builds – totalling 31 new units for Nunavummiut – were cancelled. Given Nunavut’s housing crisis, there is significant public interest in why these units were cancelled and why Nunavummiut, desperate for housing, will have to wait another year to get a home.

[10] On the same day, I wrote to NHC requesting that they send to me their complete set of responsive records, with and without redactions. I also asked for their rationale for withholding or redacting records.

- [11] On November 10, 2021, the Applicant told me that NHC had disclosed the full list of bidders for each tender, and therefore withdrew that aspect of their request for review.
- [12] On December 8, 2021, I received from NHC their complete package of responsive records. This package included the initial disclosure package and the e-mail package. There was also a cover letter with new reasons for the withholding or redaction of records, based on sections 15, 17 and 24 of the ATIPPA. The letter also indicated that certain redactions had been applied in error to the initial disclosure package, and NHC was prepared to release that information to the Applicant.
- [13] On January 5, 2021, I received the Applicant's response to NHC's submissions. I invited NHC to reply to any new arguments raised by the Applicant. I received NHC's reply on January 26, 2021.

Law

- [14] In refusing or redacting disclosure, NHC initially relied mainly on the following portions of section 14 of the ATIPPA:
14. (1) The head of a public body may refuse to disclose information to an applicant where 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, ...
 - (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Nunavut or a public body, or considerations that relate to those negotiations; [or]
- ...
- (g) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

- [15] The purpose of section 14(1)(a) and (b) is to strike a balance between the goal of preserving an effective and neutral public service capable of producing full, free and frank advice and the goal of providing a meaningful right of access: *John Doe v. Ontario (Finance)*, 2014 SCC 36 (CanLII) at paragraphs 43 to 46; see also *Canadian Council of Christian Churches v. Canada (Minister of Finance)*, 1999 CanLII 8293 (FC), which is quoted approvingly by Justice Rothstein in the Supreme Court of Canada.
- [16] The section 14(1) exemptions serve an important purpose and are reasonably broad in scope, but they do have boundaries. In *Department of Health (Re)*, 2021 NUIPC 4 (CanLII), I quoted and adopted the former Commissioner’s explanation of how section 14(1) should be interpreted. I will not repeat the full analysis here, because it is quite lengthy. I do note, however, that section 14(1)(a) and (b) do not protect the final decision made, nor do they apply to information that is merely factual in nature.
- [17] The former Commissioner interpreted and applied section 14 in a very similar context in *Nunavut Housing Corporation (Re)*, 2020 NUIPC 7 (CanLII). That case also concerned NHC briefing notes. I adopt from that case the former Commissioner’s statement of the applicable law.
- [18] NHC also redacted certain information under section 23. It is a long section, but the most important part is subsection (1):
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.
- [19] I have previously said that section 23 is probably the most complex provision of the entire ATIPPA: *Department of Executive and Intergovernmental Affairs*, 2021 NUIPC 13 (CanLII) at paragraph 41. In *Department of Human Resources (Re)*, 2021 NUIPC 4 (CanLII), I explained how the different parts of s 23 fit together.
- [20] For purposes of this case, I need note only that disclosure of the “business card” information (name, title, contact information) of GN employees is

not an unreasonable invasion of their personal privacy: *Department of Health (Re)*, 2021 NUIPC 12 (CanLII) at paragraph 78. Records revealing what GN employees said or did while on the job are also generally disclosed, unless another exemption applies.

[21] In its submission of December 8, 2021, NHC added arguments based on sections 15(1), 17(1)(b) and (c), and 24(1)(b) and (c).

[22] Section 15(1) 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;
 - (b) information prepared by or for an agent or lawyer of the Minister of Justice or a public body in relation to a matter involving the provision of legal services; or
 - (c) information in correspondence between an agent or lawyer of the Minister of Justice or a public body and any other person in relation to a matter involving the provision of advice or other services by the agent or lawyer.

[23] The test for solicitor-client privilege is well-known, and has been applied numerous times by the former Commissioner and by me. In *Nunavut Arctic College (Re)*, 2021 NUIPC 17 (CanLII) 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."

[24] Section 17(1)(b) and (c) read as follows:

17. (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the economic interest of the Government of Nunavut or a public body or the ability of the Government to manage the economy, including the following:

...

- (b) financial, commercial, scientific, technical or other information in which the Government of Nunavut or a public body has a proprietary interest or a right of use and that has, or is reasonably likely to have, monetary value;

- (c) information the disclosure of which could reasonably be expected to
 - (i) result in financial loss to,
 - (ii) prejudice the competitive position of, or
 - (iii) interfere with contractual or other negotiations of,the Government of Nunavut or a public body; ...

[25] In *Nunavut Housing Corporation (Re)*, 2021 NUIPC 25 (CanLII) at paragraphs 116 and 117, I explained how the “reasonable expectation of harm” test in section 17(1) should be interpreted. It occupies a middle ground between that which is probable and that which is merely possible. A public body must provide evidence “well beyond” a mere possibility of harm.

[26] Section 24(1)(b) and (c) read as follows:

24. (1) Subject to subsection (2), the head of a public body shall refuse to disclose to an applicant

...

(b) financial, commercial, scientific, technical or labour relations information

(i) obtained in confidence, explicitly or implicitly, from a third party, or

(ii) that is of a confidential nature and was supplied by a third party in compliance with a lawful requirement; ...

(c) information the disclosure of which could reasonably be expected to

(i) result in undue financial loss or gain to any person,

(ii) prejudice the competitive position of a third party,

(iii) interfere with contractual or other negotiations of a third party, or

(iv) result in similar information not being supplied to a public body; ...

[27] Section 24 in general is intended to protect “informational assets” of a third party which would otherwise be closely held and not generally known by the public: *Review Report 18-144 (Re)*, 2018 NUIPC 9 (CanLII). The basic idea of section 24 is that a person dealing with the GN should

not lose its business information, which would otherwise be confidential, through the back-door of the ATIPPA.

[28] A public body may change the basis on which it discloses or withholds records: *Nunavut Housing Corporation (Re)*, 2021 NUIPC 25 (CanLII) at paragraph 113. The important thing is that an applicant must have adequate notice of the new rationale, and a fair opportunity to respond. Those conditions were met in this case.

[29] At the same time, a public body has an obligation to state the specific exemption claimed for each redaction: *Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13 (CanLII) at paragraph 17.

Analysis

[30] Before considering whether NHC correctly applied the exemptions, I want to address certain issues with NHC's processing of the Applicant's request.

Processing problems

- [31]** The NHC processed this request in a way that has led to unnecessary difficulties. For example:
- a. A detailed explanation for the exemptions was provided to the Applicant only after the Applicant requested review.
 - b. There was only a limited attempt to correlate the claimed exemptions to specific redactions.
 - c. The e-mail package was withheld in its entirety.
 - d. The e-mail package appears incomplete, since documents are referred to that are not included.
 - e. NHC's search for documents continued while the review process was underway.

- [32] If these deficiencies were a one-time occurrence, I would mention them briefly and move on. But there have been process issues in almost all recent Review Reports involving the NHC: see, for example, *Nunavut Housing Corporation (Re)*, 2021 NUIPC 26 (CanLII); *Nunavut Housing Corporation (Re)*, 2021 NUIPC 25 (CanLII); *Nunavut Housing Corporation (Re)*, 2020 NUIPC 7 (CanLII).
- [33] The ATIPP process works best when a deliberate, sequential procedure is followed. The scope of the search is set. Then the search for responsive records is completed. Then exemptions are applied. Then a detailed rationale for the exemptions is prepared. Then the disclosure package, with records and rationale, is sent to the applicant. If the applicant requests review, everything is already in place and the review process can, in most cases, proceed smoothly.
- [34] The process followed by NHC is noticeably different from the process followed by other public bodies in Nunavut. Initial searches are limited, and are expanded only if review is requested. Broad exemptions are claimed, but not correlated to specific redactions. Records are provided without context. Steps that should be discrete start to overlap. I suspect it is all done to save time, but in the long run it has the opposite effect.
- [35] Furthermore, NHC appears to pay little heed to previous reports from this office. Much of what I write in this decision was said by the former Commissioner in *Nunavut Housing Corporation (Re)*, 2020 NUIPC 7 (CanLII). That Review Report is less than two years old, but NHC here repeats many of the same errors identified by the former Commissioner.

The duty to assist and the duty to sever

- [36] The ATIPPA leans towards disclosure. Any exemptions are meant to be limited and specific. That is scheme of the Act: ATIPPA, section 1.
- [37] As my predecessor pointed out on many occasions, the combination of section 5(2) (duty to sever where possible) and section 7(1) (duty to assist) means that “every record must be assessed page by page, line by line and

even word by word”: *Review Report 18-136 (Re)*, 2018 NUIPC 1 (CanLII); see also *Review Report 19-159 (Re)*, 2019 NUIPC 12 (CanLII). I know this process can seem tedious at times, and it can be tempting for a public body to take shortcuts, but that is what the scheme of the Act requires.

- [38]** It will be the rare case when a whole class of responsive records can be withheld. An example is cabinet records, which are exempted under section 13(2), provided each record fits within the definition in section 13(1). The confidentiality attached to cabinet records is underlined by the fact that section 13 is a rare mandatory exception – if a record falls within section 13, it must be withheld. Most exemptions in the ATIPPA are discretionary, not mandatory.
- [39]** In this case, NHC has withheld, in full, 247 pages of internal e-mails touching on the cancellation of the three tenders. (The number of pages is a bit misleading, because of the inclusion in full of e-mail chains. A chain of eight e-mails, for example, produces a record with 36 e-mails.) The NHC has not attempted to sever and disclose. That is not in keeping with NHC’s obligations under sections 5(2) and 7(1).
- [40]** I turn now to a consideration, in numerical order, of the nine exemptions claimed by NHC: section 14(1)(a), (b), (c) and (g), section 15(1), section 17(1)(b) and (c), and section 24(1)(b) and (c).

Section 14(1)

- [41]** The main exemptions claimed by NHC are in section 14(1), and specifically clauses (a), (b)(i), (c) and (g). They are quoted in the Law section above. These are four separate exemptions, but NHC is not specific about which exemption applies to which redaction. In its disclosure to the Applicant, there are never less than three exemptions claimed for any given redaction.
- [42]** There will be situations in which more than one exemption can apply to a given redaction, and the public body is entitled to say so when appropriate: *Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13

(CanLII) at paragraph 19. But it will be a rare case when exactly the same exemptions apply to every redaction.

- [43]** The purpose of the section 14 exemptions are to create a protected space within which the employees of a public body can figure out what they are going to do, without fear of criticism for being frank and without risk of premature disclosure.
- [44]** Like all exemptions, the section 14 exemptions must be carefully limited. If defined vaguely or applied loosely, there is a danger that they will swallow too much information, and the accountability of public bodies will be impaired. That is not keeping with the purposes of the Act.
- [45]** I can quickly eliminate consideration of clauses 14(1)(c) and (g).
- [46]** Clause 14(1)(c) creates a protected space for a public body's negotiating position or strategy. In this case, that was not in issue. The decision under consideration was whether to cancel the tenders, which is not a negotiation. The fact that a completed tender process will involve, at some point, a negotiation between principal and contractor does not bring every aspect of the tender process under the exemption in section 14(1)(c). There has to be a nexus between the redacted information and a specific negotiation. In this case, there is no nexus.
- [47]** Clause 14(1)(g) creates a protected space for pending policy or budgetary decisions. In this case, that was not in issue. Although the decision to cancel tenders had implications for how much of NHC's approved budget would be spent during the 2021 construction season, that does not bring the decision within clause 14(1)(g). Almost every decision made within government has an impact on spending. Clause 14(1)(g) is not meant to cover everything with a dollar figure attached. In any event, the ATIPP request was made after the decision to cancel the tenders had been made. At that point, nothing was "pending". I agree with the Applicant that the fact the same projects might be tendered in a future year is irrelevant.

- [48]** That leaves us with clauses 14(1)(a) and (b). Criteria for the application of clauses 14(1)(a) and (b)(i) have been developed by my counterparts across Canada. I touch on those criteria in the Law section above.
- [49]** NHC’s initial disclosure to the Applicant consisted of three documents, totalling eleven pages. NHC describes them all as “briefing notes”, although only one bears that title. The three documents are:
- a. Briefing Note: Rising costs and the impacts on construction (2 pages, no original date, last update August 20, 2021, heavily redacted)
 - b. NHC Construction Progress (5 pages, no original date, last update June 8, 2021, partly redacted, except for table of Public Housing Construction Status, which is entirely redacted)
 - c. NHC’s Planned Builds and Public Housing Construction Allocation and Methodology (4 pages, no date, unredacted)
- [50]** The documents are presented without context. It is not apparent who wrote them, or for whom they were written. NHC says in its written submission that briefing notes are prepared for the NHC minister, which may be generically true, but NHC offers no evidence that these documents were transmitted to a minister, received by a minister, read by a minister, or otherwise used by a minister. Moreover, as I have mentioned, only one of the documents is actually titled “Briefing Note”.
- [51]** In the absence of any context from the NHC, I am, like the former Commissioner in *Nunavut Housing Corporation (Re)*, 2020 NUIPC 7 (CanLII), am left only with internal evidence from the documents themselves.
- [52]** I have had the advantage of viewing the two redacted documents with the redactions removed. I have carefully considered each redaction. In my view, the documents should be disclosed in full, without redaction. I have reached that conclusion based on the following considerations:

- a. The dates on the redacted documents are after the tenders were cancelled. At the very latest, the Taloyoak tender was cancelled by May 28, 2021, when the minister spoke about it in the Legislative Assembly (Hansard, page 25, Question 1309). The other two tenders were cancelled before that. A document dated after a decision has been made is not giving advice or recommendations about that decision.
- b. Most of the redacted information consists of statements of fact about what NHC has done or is doing. These statements of fact do not fit within any of the exemptions claimed by NHC.
- c. Even the section headed “Advice and Recommendations” does not contain anything that can properly be called “advice” or “recommendations”. The section begins with the words “The Corporation has taken the following approach” followed by a list with four bullets. The bullets are factual statements about what NHC is doing. Factual statements do not become “Advice and Recommendations” merely by being labelled as such.
- d. Nowhere in the redacted documents is advice given or a recommendation made, nor is any decision called for.

[53] My only hesitation is over certain future-oriented statements in the redacted documents. I have concluded that these statements, too, should be disclosed. Although the future events may not occur, no advice is given, no recommendation is made, and no decision is called for. In my view, these statements do not fall under section 14(1).

[54] I do not accept NHC’s argument that this is a situation where facts are so interwoven with advice and recommendations that they cannot be separated. If they were, they could be redacted. But the simple fact is that the documents contain neither advice nor recommendations.

- [55] My conclusion is different with respect to the e-mail package, which was withheld in full. In my view, some of the information in the e-mail package falls within sections 14(1)(a) or 14(b)(i).
- [56] For example, many of the records in the e-mail package flow from an e-mail from the contractor that had won the Taloyoak contract. The e-mail is then copied internally to multiple NHC employees, each of whom weighs in with information and analysis based on their expertise and experience. A recommendation is worked out and moves its way up the NHC hierarchy for a decision. The ultimate decision is public: we know the tender was cancelled. But the rest of the discussion has been entirely withheld by NHC.
- [57] There is no question that some of the discussion involves NHC employees advising, recommending, analyzing, consulting or deliberating. That is the sort of thing that the ATIPPA says may be carried on without fear of disclosure. But does every line of the discussion fit within clause 14(1)(a) or (b)(i)? In my view, the answer is no.
- [58] NHC needs to go back over the e-mail package and review it “page by page, line by line, and even word by word” (to use the words of the former Commissioner) with the goal of disclosing as much as possible. A blanket redaction is not a proper application of the exemptions in section 14(1). It is not keeping with NHC’s statutory duty to sever in section 5(2) and its duty to assist in section 7(1).

Section 15(1)

- [59] The section 15(1) exemption is for records protected by solicitor-client privilege.
- [60] Nothing in the initial disclosure package is covered by section 15.
- [61] In the e-mail package, there are records that plainly fall under section 15(1). Legal advice is sought and received. Those records need not be disclosed, subject to my later comments about the exercise of discretion.

Section 17(1)(b) and (c)

- [62]** NHC also claims an exemption under section 17(1)(b) and (c). Those exemptions are intended to protect the economic and other interests of public bodies.
- [63]** Again, NHC has not attempted to link the exemptions to any particular redaction. For that reason alone, the claim for an exemption fails.
- [64]** In any event, NHC has not met the onus of proof. As discussed in the Law section above, the “reasonable expectation of harm” test requires evidence well beyond a mere possibility of harm. NHC has offered no evidence at all, and so it goes without saying it has not discharged its onus. I reached the same conclusion for the same reason in *Nunavut Housing Corporation (Re)*, 2021 NUIPC 25 (CanLII) at paragraph 118.
- [65]** I would also point out that section 17(1)(b) protects information in which a public body “has a proprietary interest or a right of use” and that is likely to have monetary value. The section 17(1)(b) is intended to protect things like computer software. That is not at all the sort of information at issue in this case.

Section 23

- [66]** The section 23 exemption is for records containing personal information, the disclosure of which would be an unreasonable invasion of a third party’s privacy.
- [67]** In the initial disclosure package, NCH claims the section 23 exemption for occurrences of the name and job title of its employees. This is an incorrect use of section 23. The former Commissioner pointed out the same error to NHC in *Nunavut Housing Corporation (Re)*, 2020 NUIPC 7 (CanLII).
- [68]** As I noted in the Law section above, the “business card” information (name, title, contact information) of GN employees is not an unreasonable invasion of their personal privacy. Records revealing what GN employees

said or did while on the job are also generally disclosed, unless another exemption applies.

- [69] The information in the initial disclosure package that was redacted under section 23 should be disclosed.
- [70] With respect to the e-mail package, the business card information of NHC employees whose names appear in the e-mail package should also be disclosed. There is no basis on which to redact this information.

Section 24(1)(b) and (c)

- [71] NHC also claims exemptions under section 24(1)(b) and (c). Those exemptions are intended to protect the business interests of a third party.
- [72] Again, NHC has not attempted to link the exemption to any particular redaction. For that reason alone, the claim for an exemption fails. The onus of proof is on NHC.
- [73] In any event, NHC has not met the onus of proof. As discussed in the Law section above, the “reasonable expectation of harm” test requires evidence well beyond a mere possibility of harm. It is not at all clear who would suffer harm, or what kind of harm, or how.
- [74] The tender register for the 2021 NHC housing projects is public and has been disclosed to the Applicant. The names of the bidders is public, as are the dollar amounts of their bids. There are a few lines in the e-mail package touching on the details of a particular company’s bid, but that does not, by itself, bring that information under the section 24 exemption. Something more is required: evidence of confidentiality; or evidence showing how disclosure could be reasonably be expected to result in “undue” financial loss or gain; or evidence of prejudice to the company’s competitive position. NHC provides no evidence along these lines, and so it cannot properly claim a section 24 exemption.

Exercise of discretion

- [75] Exemptions under the ATIPPA are either mandatory or discretionary. Sections 23 and 24 are mandatory. If information in a record is covered by those sections, the information must be withheld. Sections 14, 15 and 17 are discretionary. If information in a record is covered by those sections, the information may be withheld, but it may also be released.
- [76] When an exemption is discretionary, the head of the public body must positively exercise their discretion. They are required to turn their mind to disclosure, and decide whether to release the information, even though it could be withheld.
- [77] My predecessor first wrote about this statutory requirement in *Department of Human Resources (Re)*, 2004 NUIPC 3 (CanLII) and she repeated it dozens of times until her retirement in 2021. I affirmed the same statutory requirement in one of my first decisions (*Department of Health (Re)*, 2021 NUIPC 12 (CanLII) at paragraphs 13 to 24), and in a good number of decisions since, and in my 2020-21 annual report to the Legislative Assembly.
- [78] In this case, there is no evidence that NHC exercised its discretion. That is a legal error. The statutory requirement to exercise discretion has been repeated so often over the last eighteen years that, at this point, there is no excuse for a public body to produce an exemption rationale that does not even mention it.
- [79] In this case, the decision to cancel the tenders is well in the past, and public interest in housing issues is high. As in *Department of Justice (Re)*, 2021 NUIPC 23 (CanLII) at paragraphs 40 to 43, this may be a case where public discourse would be enhanced by discretionary disclosure. Even if NHC does not accept my recommendations, I encourage NHC to consider exercising its discretion in favour of disclosure.

A final comment

- [80]** The NHC is a sophisticated organization with a central role in Nunavut life and society. NHC can perform at a higher level than it did in this case. This file is another example of NHC adopting ATIPP processing shortcuts that end up impeding the process.
- [81]** Although this decision can be taken as critical of NHC's handling of ATIPP requests generally, I am sympathetic to the institutional constraints that have pushed it in this direction. If NHC's policy unit, which processes ATIPP requests, is overworked and understaffed – which is easy to believe, given the small size of the policy unit in relation to NHC's mandate and the policy unit's responsibilities – then NHC management needs to consider allocating more resources to it. To be frank, the people doing NHC's ATIPP are doing their best, but they need more support. I do not expect the processing issues identified in this decision to change until they get it.

Conclusion

- [82]** NHC did not correctly apply the section 14 exemption to the initial disclosure package. The section 14 exemption may apply to some records in the e-mail package, but it does support a blanket exemption of everything in the e-mail package.
- [83]** The section 15 exemption does not apply to anything in the initial disclosure package. In the e-mail package, it does apply to communications between NHC and its lawyer.
- [84]** The section 17 exemption does not apply to any records in the initial disclosure package or the e-mail package.
- [85]** NHC did not correctly apply the section 23 exemption to the initial disclosure package. The section 23 exemption does not apply to anything in the e-mail package.
- [86]** The section 24 exemption does not apply to any records in the initial disclosure package or the e-mail package.

[87] NHC did not exercise its discretion with respect to sections 14, 15 and 17.

Recommendations

[88] **I recommend** that the documents in the initial disclosure package be disclosed to the Applicant without redactions.

[89] **I recommend** that NHC review the e-mail package in accordance with this decision, with a view to severing and disclosing as much information to the Applicant as possible.

[90] If NHC decides to withhold records under sections 14, 15 or 17, **I recommend** that NHC consider whether to exercise its discretion in favour of disclosure.

[91] **I recommend** that NHC management consider allocating more resources to the unit that processes ATIPP requests.

[92] **I recommend** that NHC seek advice from the Territorial ATIPP Manager on ways to improve NHC's processing of ATIPP requests.

Graham Steele

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