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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

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Summary

[1] The Applicant requested records from the Department of Health related to the City of Iqaluit's water emergency in October 2021. Health disclosed 705 pages of records. The City of Iqaluit objected to the disclosure of certain water data. Health redacted the records to which the City of Iqaluit objected. The Commissioner finds the exemptions were not correctly applied. The water data was supplied to Health under a legal requirement. Water-quality data for a municipal water supply does not meet the test for confidentiality. The Commissioner recommends the water data be disclosed without redaction.

Nature of Review and Jurisdiction

[2] This is a review of disclosure provided to the Applicant by the Department of Health. Some records were disclosed with redactions. The Applicant requests review of the redactions. The request for review was filed under section 28(1) of the *Access to Information and Protection of Privacy Act* (ATIPPA). I conducted my review under section 31(1).

[3] I have jurisdiction over the Department of Health: ATIPPA, s 2, definition of "public body". I do not have jurisdiction over the City of Iqaluit because it is not a "public body" within the meaning of the ATIPPA or its regulations.

Issues

[4] The issues in this review are:

a. Did Health correctly apply the exemptions in section 14(1)(a), 16(1)(a)(iii), 16(1)(c) and 24(1)(b) to the water data?
b. Did Health correctly apply the exemption in section 14(1)(c) on page 78?
c. Did Health exercise its discretion in the case of discretionary exemptions?

Facts

[5] On October 12, 2021, the City of Iqaluit declared a state of local emergency due to the potential of hydrocarbons in the municipal water supply. On the same day, the Government of Nunavut (GN) issued a Do Not Consume advisory for Iqaluit's drinking water. Later, it was confirmed that hydrocarbons had indeed entered the water supply. There was substantial public interest—locally, nationally, even internationally—in Iqaluit's water emergency.

[6] Over the course of the emergency, the City of Iqaluit commissioned and paid for water-quality tests. In this decision, I will refer to the test results, as well as ancillary documents such as test submission forms and chain of custody forms, as "the water data". The City of Iqaluit sent the water data to the GN Department of Health, which is responsible for public health.

[7] In an ATIPP request dated October 29, 2021, the Applicant asked Health for "All emails sent and received and briefing notes from Oct. 2 to Oct. 29 related to fuel in the City of Iqaluit's water."

[8] It is relevant in this case to note that Health received multiple ATIPP requests from different applicants concerning the water emergency. Although there was overlap between the requests, they were worded differently, covering different sets of records and different time periods.

[9] Health disclosed to the Applicant a first batch of records (340 pages) on December 8, 2021, consisting of records that did not require third-party consultation.

[10] Meanwhile, Health had undertaken third-party consultations, under section of the ATIPPA. Multiple third parties were involved. One of the third parties consulted was the City of Iqaluit.

[11] In a letter to Health dated December 22, 2021, the chief administrative officer of the City of Iqaluit stated the municipality's objections to releasing "the water testing results (both the raw data and the completed tests results)", citing section 24(1)(b) of the ATIPPA. This letter addressed "access to information requests" received by Health but did not mention this Applicant's request specifically.

[12] In a letter to Health dated February 15, 2022, the CAO stated the municipality's objections to releasing, among other records, "Raw data of water sample tests at various locations in the City, conducted at the City's expense". The CAO's letter was directed at a different ATIPP request, but it was broad enough to cover the water data that Health proposed to disclose to the Applicant in this case. The CAO cited sections 14(1)(a), 16(1)(a)(iii) and 16(1)(c) of the ATIPPA.

[13] After the conclusion of its third-party consultations, Health disclosed to the Applicant a second batch of records (365 pages) on February 22, 2022. The water data covered all or part of 88 pages in this second batch. It was all redacted.

[14] On March 14, 2022, the Applicant asked me to review Health's disclosure.

[15] Health has provided to me the complete disclosure package (redacted and unredacted); copies of third-party consultation records; a detailed "exemptions rationale" explaining the reasoning behind each redaction; and certain additional correspondence related to similar ATIPP requests from other applicants.

[16] I received a written submission from the Applicant in response to Health's submission. The Applicant's response was shared with Health. Health told me that it had nothing to add in reply.

Law

[17] There are two statutes relevant to this case: the *Public Health Act* and the ATIPPA.

Public Health Act and regulations

[18] Water quality in a municipal water supply in Nunavut is governed by the *Public Health Act*, S.Nu. 2016, c. 13, sections 24-27, which came into force on January 1, 2020. More detailed rules are in the *Public Water Supply Regulations*, R.R.N.W.T. 1990, c. P-23, as amended by *Public Water Supply Regulations, amendment*, R-050-2019. I will refer to the Public Health Act as "the PHA" and to the regulations as "the PWSR".

[19] The PHA requires every municipal corporation to operate and maintain a water supply: section 24(1). The operator of a water supply system must ensure the water it supplies is safe for human consumption: section 26(1). The operator must, in accordance with the regulations, inspect the water supply system, test the safety and quality of the water, and "report the results of the inspections and tests": section 26(2). If the water is not safe for human consumption, fails a test, or fails to comply with the regulations, the operator must immediately notify an environmental health officer: section 27(1). If that happens, the environmental health officer must send a copy of the notice "as soon as practicable" to a medical health officer: section 27(2).

ATIPPA

[20] Health has redacted some records based on sections 14(1)(a), 14(1)(b)(i), 16(1)(a)(iii), 16(1)(c), 23(1) and 24(1)(b) of the ATIPPA.

[21] In response to my suggestion, the Applicant agreed that all the redactions based on section 23, and one redaction on page 444 based on section 16(1)(c), are not significant. I do not necessarily agree with Health's reasoning on all these redactions, but I will, with the Applicant's agreement, leave them aside in this decision.

[22] The relevant parts of section 14 read as follows:

> 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, a member of the Executive Council or a member of a municipal council of a municipality that is designated as a public body in the regulations; …
>
> (b) consultations or deliberations involving
>
> (i) officers or employees of a public body, ….
>
> (2) Subsection (1) does not apply to information that
>
> …
>
> (c) is the result of product or environmental testing carried out by or for a public body, unless the testing was done
>
> (i) for a fee as a service to a person other than a public body, ….

[23] Because section 14 is a relatively minor part of the overall case, I do not propose to go into depth on the law regarding its interpretation. I will save my discussion of it for the Analysis section below.

[24] The relevant parts of section 16 read as follows:

> 16. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
>
> (a) impair relations between the Government of Nunavut and any of the following or their agencies:
>
> …
>
> (iii) a municipal or settlement council or other local authority, …. [or]
>
> (c) reveal information received, explicitly or implicitly, in confidence from a government, local authority or organization referred to in paragraph (a) or its agency.

[25] Section 16(1)(a) has been considered in several NUIPC decisions. In none of those cases was it accepted in Nunavut as a proper rationale for a redaction. In *Nunavut Housing Corporation (Re)*, 2020 NUIPC 7 (CanLII), for example, the former Commissioner wrote:

> …just because information relates to the interaction between the Government of Nunavut and another level of government does not bring it within the protection of section 16(1)(a). There must be some reason to believe that the disclosure will impair the intergovernmental relationship and there must be some background and reasons for that conclusion.

[26] The former Commissioner goes on to note that the well-established test for "reasonable expectation of harm" is evidence demonstrating that the disclosure will result in a risk of harm that is well beyond the merely possible or speculative, but not as high as the balance of probabilities: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paragraph 52; see also *Nunavut Housing Corporation (Re),* 2021 NUIPC 25 (CanLII) at paragraphs 116 and 117.

[27] Section 16(1)(c) has also been considered in several NUIPC decisions. In most cases, it has been rejected for the same reasons as exemptions based on section 16(1)(a): lack of evidence. However, in *Review Report 16-103 (Re)*, 2016 NUIPC 7 (CanLII) the former Commissioner did accept an exemption based on section 16(1)(c). The Commissioner's explanation is brief: "I am … certain that the content of this email was intended to be confidential." As a result, this case does not offer much assistance on the interpretation of the law.

[28] The relevant parts of section 24 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;
>
> ….

[29] In *Nunavut Housing Corporation (Re)*, 2022 NUIPC 5 (CanLII) at paragraph 27, I explained the purpose of section 24:

> 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.

[30] There are various tests for confidentiality. In *Order 331-1999; Vancouver Police Board*,[1999] B.C.I.P.C.D. No. 44, the British Columbia Information and Privacy Commissioner gave a list of seven factors to aid in determining whether information was received in confidence:

> What are the indicators of confidentiality in such cases? In general, it must be possible to conclude that the information has been received in confidence based on its content, the purpose of its supply and receipt, and the circumstances in which it was prepared and communicated. The evidence of each case will govern, but one or more of the following factors - which are not necessarily exhaustive - will be relevant in s. 16(1)(b) cases:
>
> > 1. What is the nature of the information? Would a reasonable person regard it as confidential? Would it ordinarily be kept confidential by the supplier or recipient?
> > 2. Was the record prepared for a purpose that would not be expected to require or lead to disclosure in the ordinary course?
> > 3. Was the record in question explicitly stated to be provided in confidence? (This may not be enough in some cases, since other evidence may show that the recipient in fact did not agree to receive the record in confidence or may not actually have understood there was a true expectation of confidentiality.)
> > 4. Was the record supplied voluntarily or was the supply compulsory? Compulsory supply will not ordinarily be confidential, but in some cases there may be indications in legislation relevant to the compulsory supply that establish confidentiality. (The relevant legislation may even expressly state that such information is deemed to have been supplied in confidence.)
> > 5. Was there an agreement or understanding between the parties that the information would be treated as confidential by its recipient?

> 6. Do the actions of the public body and the supplier of the record - including after the supply - provide objective evidence of an expectation of or concern for confidentiality?
> 7. What is the past practice of the recipient public body respecting the confidentiality of similar types of information when received from the supplier or other similar suppliers?

[31] In *Chesal v. Attorney General of Nova Scotia*, 2003 NSCA 124 (CanLII), the Nova Scotia Court of Appeal said this list was "helpful" (at paragraph 72) though not "determinative or exhaustive" (at paragraph 73). I take the same approach: the seven-point list is helpful, but not determinative or exhaustive. On that basis, I adopt it for purposes of this decision.

[32] Finally, I note that "third party" is defined in section 2 to mean "a person other than an applicant or a public body". The word "person", in law, is broad enough to include a municipal corporation: *Legislation Act*, S.Nu. 2020, c. 15, section 1(7).

Analysis

[33] The central issue in this case is whether the water data is confidential. There are a few preliminary issues I need to clear away first.

Application of the ATIPPA to the City of Iqaluit

[34] In 2017, the Legislative Assembly amended the ATIPPA to make it easier for Nunavut's municipalities to be covered by the ATIPPA. These amendments followed a lengthy consultation between the GN and Nunavut's municipalities.

[35] As a result of the amendments, any municipality could be designated in the ATIPP regulations as a "public body" for purposes of the Act. Such a regulation has never been enacted. So, despite the statutory amendments in 2017, the ATIPPA still does not apply to Nunavut's municipalities, including the City of Iqaluit.

[36] Because the ATIPPA does not apply to municipalities, the Applicant could not make an ATIPP application directly to the City of Iqaluit. Instead, they requested records from the GN Department of Health. The ATIPPA applies to

records “in the custody or under the control” of a public body. Copies of the City of Iqaluit’s water-quality records were in the custody of Health because that is where the City of Iqaluit had sent them.

Third-party consultation

[37] The records requested by the Applicant included some information from third parties, including the City of Iqaluit. Health consulted with the third parties under sections 26 and 27 of the ATIPPA. The City of Iqaluit objected to disclosure of the water data.

[38] A third-party’s objection to disclosure is not conclusive: *Department of Health (Re)*, 2021 NUIPC 12 (CanLII) at paragraphs 29 and 33. A public body must make its own decision about whether an exemption applies. A third party’s objection is only one factor for a public body to consider in its decision.

[39] In this case, it appears that Health adopted the City of Iqaluit’s objections without any independent analysis of whether those objections had merit. Health redacted everything to which the City of Iqaluit objected. That was an error.

Section 14(1)(a)

[40] The City of Iqaluit argued to Health that the water data is exempt under section 14(1)(a) of the ATIPPA, and Health cites the same section in its exemption rationale. Section 14(1)(a) is set out in the Law section above.

[41] There is no merit to this argument. The word “analysis” must be read according to the *ejusdem generis* rule of statutory interpretation, which is to say that words in a list should be interpreted as being of the same kind: see *Nunavut Court of Justice (Re)*, 2022 NUIPC 3 (CanLII) at paragraph 28. The word “analysis” in section 14(1)(a) takes its colour from the other words in the list: advice, proposals, recommendations, and policy options. All these terms import some notion of critical reflection with a view to choosing a future course of action, and therefore, according to the *ejusdem generis* rule, so should the word “analysis”. None of these terms covers a lab report containing purely factual information about the contents of Iqaluit’s water.

[42] Even if section 14(1)(a) did apply to the water data, there is an exception in section 14(2)(c) for the results of environmental testing. The water data fits that exception.

[43] The City of Iqaluit pointed out to Health that there is, in section 14(2)(c), an exception to the exception: "unless the testing was done…for a fee as a service to a person other than a public body". The City of Iqaluit says this exception applies because it paid for the lab tests.

[44] This argument is based on a misreading of the statutory language. That exception to the exception may apply if the public body is itself providing fee-for-service lab testing. It has no application to the present case.

Section 16(1)(a)

[45] The City of Iqaluit also argued to Health that the water data is exempt under two different parts of section 16. The first is section 16(1)(a)(iii):

> 16. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
>
> (a) impair relations between the Government of Nunavut and any of the following or their agencies:
>
> …
>
> (iii) a municipal or settlement council or other local authority,

[46] This exemption has been claimed in several previous Nunavut cases, but it has never been accepted by the Commissioner. The reason is that public bodies have not come forward with evidence of how or why the intergovernmental relationship could reasonably be expected to be impaired. The "reasonable expectation" standard requires more than mere assertion or speculation.

[47] In this case, no evidence about the impairment of the intergovernmental relationship was presented by the City of Iqaluit to Health, and Health offers none to me. On that ground alone, the claim for an exemption under section 16(1)(a) fails.

[48] In any event, it is difficult for me to imagine how the relationship between the GN and the City of Iqaluit could reasonably be expected to be impaired by the release of the water data. The water data that passed from the City of Iqaluit to Health is a tiny piece of a multifaceted intergovernmental relationship. It is practically inconceivable that this broad, multipoint, ongoing relationship could be impaired by the one-time release of water-quality data. One would hope that the leaders of the GN and the City of Iqaluit are made of sterner stuff.

Section 16(1)(c)

[49] We now get to the real heart of the case: the issue of confidentiality.

[50] The City of Iqaluit objected to Health's disclosure of the water data based on section 16(1)(c). Health, in turn, cited section 16(1)(c) to the Applicant. It reads as follows:

> 16. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
>
> …
>
> (c) reveal information received, explicitly or implicitly, in confidence from a government, local authority or organization referred to in paragraph (a) or its agency.

[51] This exemption, like the exemption in section 16(1)(a), has almost always been rejected in Nunavut due to lack of evidence. As discussed in the Law section above, it was accepted in one case by the former Commissioner, but her reasons were so brief as to provide no guidance for future cases.

[52] Also in the Law section above, I outlined a helpful seven-point test for confidentiality. I find that test, which was formulated in BC and endorsed by the Nova Scotia Court of Appeal, to be equally applicable to the statutory language in the Nunavut ATIPPA.

[53] I do not propose to go through each of the seven points. In my view, the answer in this case is so obvious as to hardly admit of debate: water-quality data for a municipal water supply is not confidential. I will touch only on the highlights of my assessment of the seven-point test.

[54] Water is essential to human life. If there is a problem with water quality in a public water supply, users need to know, and quickly. No reasonable person would regard water-quality data as confidential. Across Canada, public water utilities publish their lab test results. Besides, municipalities in all Canadian provinces are subject to access-to-information laws, so there is not the slightest question that water-quality test results are available to the public. It is only in the three territories that municipalities are not subject to access laws.

[55] There is not much evidence before me of discussions between the City of Iqaluit and Health about confidentiality. Even if the City of Iqaluit's elected officials or senior management believed the water data was confidential – and again, there is not much evidence that they did – there is no evidence that Health officials agreed.

[56] To the contrary, under the PHA and PWSR, the City of Iqaluit was required to report its water-quality results. The operator of a water supply must, in accordance with the regulations, inspect the water supply system, test the safety and quality of the water, and "report the results of the inspections and tests": section 26(2).

[57] It is true that section 26(2) of the PHA could be better worded. Although it says the operator must "report the results", it does not say to whom the report must be made, or when. This may be contrasted with the reporting requirement in section 27, which is more specific. At the very least, however, section 26(2) does not permit a water supply operator to keep test results to itself.

[58] Health, as the regulator of a water supply operator, would have known that it had the right to demand the water data from the City of Iqaluit. Perhaps in this case Health's engagement with the City of Iqaluit was more in the form of a dialogue, in which information was requested rather than demanded. The City of Iqaluit may have believed that it was sending the water data to Health voluntarily, but the statutory requirement was always there in the background.

[59] In its letter objecting to disclosure of the water data, the City of Iqaluit states its conclusion that the exemptions apply, but does not present much

argument or explanation about why it reached that conclusion. The only substantive argument offered by the City of Iqaluit in favour of confidentiality is that there is a possibility of litigation arising from the water emergency.

[60] I accept that there is a possibility of litigation arising from the City of Iqaluit's water emergency, but that is not an argument in favour of confidentiality, nor is it a reason for non-disclosure. I say that for two reasons.

[61] First, the prospect of litigation does not create a new exemption under the ATIPPA. If it did, that would create the sort of "black hole" for government records that the Supreme Court of Canada warned against in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII). A black hole is created if an exception of exemption or interpretation makes it too easy for a public body to re-arrange its affairs to avoid disclosure: *Department of Health (Re)*, 2021 NUIPC 7 (CanLII) at paragraph 42. Litigation is always possible. If that were enough to create an exemption, few records would have to be disclosed.

[62] Second, if there is litigation, the water data would have to be disclosed to the plaintiffs anyway under the Rules of Court. Certain other records created by or for the City of Iqaluit may possibly attract legal privilege – that would be for the court to decide – but I can see no basis for withholding the water data. It is not subject to solicitor-client privilege, and it was not created in contemplation of litigation. It was created to check if the water was safe. Disclosure under the ATIPPA therefore has no bearing, one way or the other, on disclosure in response to a lawsuit.

[63] For the foregoing reasons, the water data was not received by Health in confidence. Health did not correctly apply section 16(1)(c) to the water data.

Section 24(1)(b)

[64] The last exemption claimed by Health to the Applicant was section 24(1)(b):

> 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; ….

[65] There is obviously some overlap between the exemption in section 24(1)(b) and the exemption in section 16(1)(c). That reflects the fact that section 16 applies to intergovernmental relations, and section 24 applies generally to all third parties. The City of Iqaluit is both a government entity and a third party, so both sections apply to it.

[66] As discussed in the Law section above, the basic idea of section 24 is that a person dealing with the GN should not lose their business information <u>which would otherwise be confidential</u> through the back-door of the ATIPPA.

[67] Paragraph (i) of section 24(1)(b) applies to situations where is <u>no</u> statutory requirement for the third party to give the information to the public body, and paragraph (ii) applies where there <u>is</u> a statutory requirement.

[68] My analysis of section 24(1)(b)(i) is the same as my analysis of section 16(1)(c). There is no relevant difference between the word "obtained" in the former and the word "received" in the latter. Applying the seven-point test, Health did not obtain the water data "in confidence" from the City of Iqaluit.

[69] That leaves section 24(1)(b)(ii). Although the City of Iqaluit may have believed it was voluntarily handing over the water data to Health, there was a legal requirement in the PHA that it do so. But was the water data "of a confidential nature"? For much the same reasons I gave for section 16(1)(c), the

answer is no. When the seven-point test for confidentiality is applied to water-quality tests from a public water supply, the outcome is decisively in favour of non-confidentiality.

Section 14(1)(b)

[70] There is one more redaction I will consider, unrelated to the water data. It is a minor point, and I will deal with it briefly.

[71] On page 78, there is a single sentence redacted from an e-mail exchange on October 14, 2021, among a group of GN employees. An exemption is claimed under section 14(1)(b):

> 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
>
> …
>
> (b) consultations or deliberations involving
>
> (i) officers or employees of a public body, ….

[72] Health's exemptions rationale says that the redacted sentence on page 78 is part of a "frank discussion" among GN officials, and therefore qualifies as "consultations" or "deliberations".

[73] I have had the advantage of seeing page 78 unredacted. There is no obvious reason why the redacted sentence was picked out for redaction. In the context of the larger conversation, there is nothing noteworthy about that one sentence. Nevertheless, I am prepared to accept that it has the character of advice and that it formed part of the "deliberations" among GN staff on how to handle the water emergency. It need not be disclosed. Nevertheless, in accordance with what I will say in the next section about the exercise of discretion, I see no possible harm in disclosing it and I recommend Health do so.

Exercise of discretion

[74] As the former Commissioner wrote too many times to count, and as I have repeated both in multiple Review Reports and in my last Annual Report to the Legislative Assembly, public bodies in Nunavut consistently fail to exercise their

statutory discretion with respect to discretionary exemptions. This is another such case.

[75] In this decision, I have explained why none of the four exemptions claimed by Health apply to the water data. However, the ATIPPA says my role is to make a recommendation to the head of the public body (in this case, the Minister of Health). I do not have the power to order disclosure. The Minister of Health is not required to accept my recommendation.

[76] Even if Health does not accept my analysis of sections 14 and 16, the law still requires them to exercise their discretion. Sections 14 and 16 are discretionary exemptions ("…may refuse to disclose…"). That means Health must at least think about releasing the information anyway, and then explain their thought process to the Applicant. To put it another way, the ATIPPA sets a minimum standard for disclosure. At least for the discretionary exemptions, public bodies are required by law to consider whether to release more than the minimum.

[77] The situation is different for section 24. That section creates a mandatory exemption ("…shall refuse to disclose…"). In this decision, I have found that the water data is not exempt under section 24. If the Minister disagrees, and maintains Health's position under section 24, then the water data must be withheld.

[78] If ever there was a case in which a public body should exercise its discretion in favour of disclosure, this is it. Nunavummiut rely on their municipality to operate the public water supply, and they rely on the Department of Health to regulate it. Can the operator and regulator of a public water supply really keep water-quality data to themselves? I expect Nunavummiut would be shocked if they can.

Some final comments

[79] I do not wish this decision to be taken as critical of the City of Iqaluit. The City of Iqaluit is not covered by the ATIPPA, and its elected officials and senior management do not have experience interpreting and applying this rather specialized law.

[80] The City of Iqaluit's letters of objection addressed the water data records, but also other records that were outside the scope of this Applicant's request. In my view, the City's objections make more sense in the context of those other records. That issue may come before me in a different review, so I make no judgment on it now. In the context of the water data, however, and for the reasons given in this decision, the City's objections to disclosure cannot stand.

[81] If the City of Iqaluit were covered by the ATIPPA, there would be no question that the water data must be disclosed. The Legislative Assembly amended the ATIPPA in 2017 to bring municipalities under the ATIPPA, but the necessary regulation has never been passed. That is a matter between the GN and the municipalities. This case illustrates, in my view, the benefit for Nunavummiut of bringing municipalities under the umbrella of the ATIPPA.

Conclusion

[82] Health did not correctly apply the exemptions in section 14(1)(a), 16(1)(a)(iii), 16(1)(c) and 24(1)(b) to the water data.

[83] Health correctly applied the exemption in section 14(1)(c) to the redacted sentence on page 78.

[84] Health did not exercise its discretion with respect to the exemptions in sections 14 or 16.

Recommendations

[85] I recommend that Health disclose the water data without redaction. For greater certainty, "the water data" refers to all the redacted information on pages 350, 351, 390, 391, 396-400, 408-416, 460-462, 481, 482, 493-500, 503-510, 549-550, 607-612, 614-620, 624-630, 633, 637-639, 642, 645, 647, 649, 678-694, 699 and 700 of the disclosure package.

[86] I recommend that Health exercise its discretion and disclose the record on page 78 without redaction.

Graham Steele
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