

NORTHWEST TERRITORIES INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 05-048

File: 04-241-4

May 24, 2005

BACKGROUND

On August 16th, 2004 I received a request from the Applicant to review the response he had received to the Request for Information he had made to the Financial Management Board Secretariate (FMBS) for information relating to his previous employment with the Government of the Northwest Territories. The original request was made by letter dated June 4th, 2004 and requested a series of records. Many of the records requested were very dated (specific request was made for items dating back to 1998). FMBS responded to the request on July 5th, 2004. A number of records were provided in response to the request. With respect to other records, however, the Applicant was directed to another public body where the records requested were generally available to the public. For one category of records requested, it appears that no records were provided because all of the records requested were in the possession and control of another public body. There is no indication as to whether or not that portion of the request was forwarded to that other public body for response. For yet another category of records requested, the public body takes the position that the records could not be provided because they were records were not in the possession of a public body as defined in the *Access to Information and Protection of Privacy Act* but were, in fact, in the control of the office of the Legislative Assembly or the office of a member of the Legislative Assembly or a member of the Executive Council. Of the records provided to the Applicant, some material had been severed because it was protected from disclosure under various provisions of the Act, although it does not appear that specifics were provided. Still other records were not provided to the Applicant at all as, in the opinion of FMBS, they were prepared for Executive Council or were protected by solicitor client confidence.

ISSUES

The Applicant's Request for Review listed a number of complaints. There were two general complaints and a number of more specific ones. The two general complaints were:

1. The response he received was "significantly incomplete".
2. The Information and Privacy Commissioner had not been copied with the response

In addition, the Applicant was concerned that, with respect to one document, which was a briefing note to the Minister, it was "coverless, unsigned, undated" and "plain" so that "authenticity cannot be established". He also complained that the record was "an amalgam of legislative breaches, corruption, lies, misrepresentations and flawed recommendations" that could not have been produced in a vacuum, yet no research notes, correspondence, e-mails etc. were provided to document sources, opinions or circulation. He felt that all supporting records should have been provided.

He did note, however, that this was the very same record as he received in a separate request made by him to another government department.

It is to be noted that the Applicant made clear that the reason for his request for information was to assist him in preparing for a court case he had pending against the Government of Northwest Territories.

DISCUSSION

The second and third complaints are straight forward and simple to address and I will, therefore, deal with those complaints first.

With respect to the second complaint, that is that the public body did not provide this office with copies of its correspondence to me, there is no obligation for them to do so. There is nothing in the Act which provides that my office needs to be notified that a Request for Information has been made. No matter, in fact, normally comes to my attention unless or until an Applicant is unhappy with the response he or she receives to a request for information. If a matter does come to my attention while the access request is still being dealt with by the public body in the first instance, the correspondence is simply filed and no steps are taken by this office unless it later comes to me through a formal Request for Review. The public body, therefore, did nothing improper in failing to provide me with copies of its correspondence to the Applicant when dealing with the request at the first instance.

With respect to the third complaint, I would observe that the *Access to Information and Protection of Privacy Act* is not a substitute for discovery in litigation. It is a vehicle for accessing records in the possession of public bodies. There is nothing in the Act which requires a public body to provide documents capable of authentication for court purposes. I am satisfied that the public body in this instance provided the record which the Applicant had concerns about in the condition that it existed in their records. Nothing that the Applicant has provided to me in his submissions points to the existence of another, more elaborate copy of this record other than his self described "supposition" that there must be another version because of the circumstances surrounding his case. I point out that the Applicant himself confirmed that this record was exactly the same as the one he received from another department on a separate Request for Information. This suggests to me that the record he received from FMBS is genuine and complete, despite the Applicant's misgivings.

Having dealt with those issues, I turn to the Applicant's last complaint, which is that the records he received were significantly incomplete.

The public body provided this office with a binder containing all of the records in the possession of the public body which they had identified as responsive or possibly

responsive to the Applicant's request. They also provided me with a chart showing which of the records were disclosed and which were not and a very brief explanation (less than one line in most cases) as to why the latter records were not disclosed. Ten records were disclosed to the Applicant in their original form. One record was disclosed to him with some parts of it severed. For this record, the public body cited section 23 of the Act (unreasonable invasion of a third party's privacy). Sixteen other records were identified but not disclosed to the Applicant, citing variously sections 13, 14 and 15 of the Act. In one instance the public body indicated that the record was not responsive to the Applicant's request.

In this case, the Applicant's submissions, though extensive, are not very helpful in assisting me to assess whether or not the public body properly applied the provisions of the Act in refusing to disclose certain records. In fairness to the Applicant, it is difficult to comment on records that you don't know the contents of. For the most part, he relies on his intuition. He believes, based on the fact that he is in litigation with the Government of the Northwest Territories, and his feeling that he has not been dealt with fairly throughout a fairly long ordeal involving several different complaint processes, that the public body is trying to hide something that is relevant to his court case and embarrassing to the government's case.

However, the only thing I can rely on is the Act itself. I also have the benefit, which the Applicant does not have, of being able to review the records in question.

Firstly, I should say that I am satisfied that the public body has identified all of the responsive or possibly responsive records in its possession and has provided me with a full list of those. Nothing that the Applicant has provided me convinces me that the public body is being deceptive or has failed to reveal to me all of the records in its possession.

I will, therefore, deal with each of the records which the department identified but refused to disclose in whole or in part and comment on each of them individually.

Document 1 (Tab 14 of materials provided by public body)

The first record which the public body refused to disclose is a Briefing Note, dated July 2001. It appears from the chart provided to me by the public body that it was written by a Labour Relations Officer within the Financial Management Board Secretariate for the Director of Labour Relations. The public body claims that the record is exempt from disclosure pursuant to section 13(1)(d) of the Act. That section reads as follows:

- (1) The head of a public body shall refuse to disclose to an applicant information that would reveal a confidence of the Executive Council, including ...
 - (d) briefings to members of the Executive Council or the Financial Management Board in relation to matters that
 - (i) have been before, or are proposed to be brought before, the Executive Council or the Financial Management Board, or
 - (ii) are the subject of consultations described in paragraph (c).

For the purpose of this discussion, it is also necessary to know that subsection 13(1)(c) of the Act also prohibits disclosure of a record that might reveal

- (c) consultations among members of the Executive Council or the Financial Management Board on matters that relate to the making of government decisions or the formulation of government policy;

Although I asked for more detailed reasons from the public body about why this record was not disclosed, all they provided me with was:

This was produced in confidence to be brought forward to a member of the Executive Council, therefore it was not released in compliance with Section 13(1)(d) of the ATIPP Act

In order to fall under section 13(1)(d), a record has to have been prepared for a Member of the Executive Council or the Financial Management Board. The public body has not provided me with any explanation which would assist me in determining the specific purpose for which the briefing note was prepared. There is nothing in the record itself which suggests who it was prepared for. As noted above, however, in the chart provided to me on this review it is noted to have been given to the Director of Labour Relations.

According to the information on the Legislative Assembly's web site,

The Executive Council is the senior decision-making body of the Government of the Northwest Territories and is made up of a Premier and six Ministers, all of whom are elected by all Members of the Legislative Assembly.

The Director of Labour Relations is not an elected member of the Legislative Assembly and, therefore, cannot be a member of the Executive Council.

According to the Financial Administration Act,

3. (1) A committee of the Executive Council called the Financial Management Board is established with responsibility for the financial management and administration of the Government.

....

(3) The Board shall be composed of the Minister of Finance and the other members of the Executive Council that may be designated by the Executive Council.

The Director of Labour Relations is not a member of the Executive Council and is not, therefore, a member of the Financial Management Board.

If, as it appears, this briefing note was prepared for the Director of Labour Relations and the Director of Labour Relations is not, by definition, a member of either the Executive Council or the Financial Management Board, section 13(1)(d) of the Act cannot apply to refuse disclosure.

However, although the public body has not relied on it, I do believe that section 14 (1)(b)(i) does apply. That section reads 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
 - (b) consultations or deliberations involving
 - (i) officers or employees of a public body,

This brief includes consultations and deliberations involving a former employee of the public body. As such, the public body has a discretionary exemption. Since they have not referred to section 14 as it applies to this record, however, clearly they have not applied that discretion. As I have said in previous recommendations, that means that there must be a good reason for **not** disclosing the record and that reason (or reasons) should be articulated clearly. In this case, therefore, the public body must exercise its discretion and decide, based on all of the circumstances, whether or not to disclose the brief and, if they decide not to disclose, the public body must advise the Applicant as to the reasons for their refusal.

Document 2 (Tab 15 of materials provided by public body)

This is also a Briefing Note, indicated as having been written by the Director of Labour Relations to an Executive Assistant. There is no indication as to who's Executive Assistant the recipient was. A search of the Legislative Assembly's web site shows that the named individual is currently the Premier's Executive Assistant. At the time the note was sent, I believe that the Premier was the Minister of Finance and, for the

purpose of this discussion, I assume that he had the same Executive Assistant in that position as he does now as Premier.

The public body indicates that this briefing note was not disclosed to the public body because:

This was produced in confidence to be brought forward to a member of the Executive Council, therefore, it was not released in compliance with section 13(1)(d) of the ATIPP Act

Assuming that the Executive Assistant named was the then Minister's Executive Assistant, I am satisfied from the contents of the record that it was, in fact, prepared as a briefing intended for the Minister and simply filtered to him through his assistant. This record, therefore, meets the first test set out in section 13(1)(d). But was it prepared "in relation to matters which had been before or were proposed to be brought before, the Executive Council or the Financial Management Board"? Since the public body has not given me any indication why the brief was prepared or whether the subject matter has at any time been brought before the Executive Council or the Financial Management Board, I have to look at the content of the brief to garner from the content the purpose of the brief. I have some difficulty believing that the subject matter of the brief would be the kind of thing that would be discussed at Executive Council or the Financial Management Board. However, although the public body has not relied on it, I do believe that section 14 (1)(b)(i) does, once again, apply to this record. As noted above this brief relates to a personnel matter and it appears to have been prepared for a member of the Executive Council relating to an ongoing issue with respect to a former employee. As such, the public body has a discretionary exemption. Since they have not referred to section 14 as it applies to this record, however, clearly they have not applied that discretion. Again, therefore, the public body must exercise its discretion and decide, based on all of the circumstances, whether or not to disclose the brief and, if they decide not to disclose, the public body must advise the Applicant as to the reasons for their refusal.

I note that there is a short e-mail from Sylvia Haener to Lisa Richinger dated January 15, 2003 attached as a cover to this record. There is no reason, in my opinion, that this e-mail should not be disclosed.

Document 3 (Tab 16 of materials provided by public body)

This document is described as a legal opinion from lawyers employed in the Department of Justice and providing the public body with advice in connection with the dispute between the public body and the Applicant. It is addressed to the Director of Labour Relations, the Secretary to the Financial Management Board and the Secretary to the Cabinet. This, too, begins with an e-mail cover sheet dated January 15, 2003. There is nothing in the e-mail itself which should not be disclosed.

The attachment is clearly a legal opinion from the government's in-house legal counsel. Section 15 of the Access to Information and Protection of Privacy Act, on which the public body relies in refusing to disclose this record, reads as follows:

15. 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.

It is to be noted that this provision is a discretionary one. The public body **may** refuse to disclose where the information falls under the protection of solicitor/client privilege. I

have no problem in saying that the letter is a legal opinion and therefore falls under the protection of section 15. The public body's position, however, seems to be that because it is protected by privilege, that creates an automatic exemption. That is not, however, the case. In order to comply with the section, there must be a clear exercise of that discretion. As noted above, to exercise its discretion, the public body must weigh the pros and the cons of disclosure and, in the event that they decide to refuse disclosure, in my opinion they must advise the Applicant of their reasons for refusing to disclose.

Document 4 (Tab 17 of materials provided by public body)

This document is noted as being a Briefing Note from the Director of Labour Relations to the Secretary of the Financial Management Board. In fact, this record consists of two separate Briefing Notes. The public body relies on section 13(1)(a) and (d) for its refusal to disclose this record. Section 13(1)(d) is outlined above. Section 13(1)(a) provides that:

13. (1) The head of a public body shall refuse to disclose to an applicant information that would reveal a confidence of the Executive Council, including
 - (a) advice, proposals, requests for directions, recommendations, analyses or policy options prepared for presentation to the Executive Council or the Financial Management Board;

Once again, there is an e-mail cover sheet on this record which should be disclosed as there is nothing in the e-mail that, in my opinion, could be subject to any of the exceptions to disclosure contained in the Act.

There is nothing on the face of the record which suggests that it was prepared for a member of the Executive Council or the Financial Management Board. According to

the legislation creating the Financial Management Board, only elected members of the legislative assembly are members of the Board. The Secretary no doubt actively manages the business of the Financial Management Board, but is not a member of the board. Without any indication or explanation being provided by the public body as to why these Briefing Notes were prepared or what, specifically, they were intended to be used for, and not knowing the kinds of things that would normally come before the Financial Management Board for discussion, I certainly cannot say from their content that these Briefing Notes fall within the exception provided for in section 13. They may, however, be subject to the discretionary exemption provided for in section 14. Several of the subsections could apply, including any of the following:

- (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 the Northwest Territories or a public body, or considerations that relate to those negotiations;
- (d) plans that relate to the management of personnel or the administration of a public body that have not yet been implemented;

Again, however, before simply refusing access, the public body is required to exercise its discretion as to whether or not to disclose the record or any part of it. I note that at least one of these Briefing Notes contains almost verbatim much of the information which is contained in the copy of a Briefing Note that was disclosed to the Applicant. Although it is not for me to say how the public body's discretion should be exercised, I do note that in all cases the public body should err in the favour of disclosure. Where,

as here, the Applicant already has the information in question, there seems little reason not to disclose at least those parts of the record which are the same as records already disclosed.

Document 5 (Tab 18 of materials provided by public body)

Once again, although this has been indexed as one record, that record contains a covering e-mail and two Briefing Notes. It appears that the Director of Labour Relations forwarded the two Briefing Notes to the department's legal counsel. Once again, the public body is relying on section 13(1)(a) and (d) of the Act to deny disclosure. It is to be noted that the public body, in this case, is not claiming solicitor/client privilege.

With respect to the e-mail covering the two briefing notes, there is nothing, in my opinion, in this e-mail which would fall under any exemption contained in the Act.

The first of the two Briefing Notes attached to this e-mail is exactly the same as the Briefing Note that was provided to the Applicant in response to his request for information. I have difficulty understanding why the public body would claim in one instance that a Briefing Note is exempt from disclosure because it was prepared for the Executive Council or the Financial Management Board and, in another context release the very same record to the Applicant. As this record has already been provided to the Applicant, there is no reason to refuse disclosure when the record appears in a different context.

It is impossible to determine, based on the very minimal information provided to me by the public body, for whom the second of the two Briefing Notes in this record was prepared. Section 33 of the Act provides that where an Applicant has been denied access to a record, the onus is on the head of the public body to establish that the applicant has no right of access to it. This being the case, they have not met the onus of showing that this Briefing Note was prepared for a member of the Executive Council

or the Financial Management Board.

Once again, however, it does appear that section 14 might apply for the same reasons as outlined above.

Document 6 (Tab 19 of materials provided by public body)

The first four pages of document 6 appears to be a point by point rebuttal of allegations made by the Applicant against the Government of the Northwest Territories in connection with his actions against the government. The last two pages are a chronology of events surrounding the Applicant's various complaints. There is nothing on the face of either of these records which suggests who prepared them or who or why they were prepared. In the very brief explanation provided by the public body, they indicate that it was prepared by the Director of Labour Relations for "Minister Handley". Although Minister Handley is a member of both the Executive Council and the Financial Management Board, the public body is not relying on section 13, but rather on section 14 (1)(a) of the Act to deny access. That section reads 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 or a member of the Executive Council;

As noted above, this is a discretionary section of the Act. Furthermore, the onus remains on the public body to establish that the Applicant has no right of access. This requires that where discretion is provided for in the Act, the public body must show clearly that they have exercised that discretion by providing detailed reasons as to how and why they have done so. In this case, based on the contents of the records, I am satisfied that the first of these records contains a brief analysis of the situation between

the government and the Applicant. I am prepared to accept that it was prepared for the purpose of providing analysis and advice to a member of the Executive Council and is therefore subject to a discretionary exemption as provided under section 14(a). However, once again, there must be an active exercise of that discretion.

The second of the two documents, however, is merely a two page chronology of facts. It contains no analysis, advice, recommendations or policy options. It cannot, therefore, be protected from disclosure pursuant to section 14(1)(a) of the Act.

Document 7 (Tab 20 of materials provided by public body)

This record is an e-mail chain. The first e-mail in the chain is from the government's legal counsel addressed to the Secretary to the Cabinet and copied to a number of other individuals within the government, including the Director of Labour Relations, the Secretary of the Financial Management Board and several other individuals, indicating that a legal opinion was attached. The second e-mail in the chain is from, I believe, the Deputy Minister of the department in which the Applicant was previously employed and is addressed to the Secretary to the Cabinet and a number of other employees of the government. I could be mistaken about the position of the individual who sent this e-mail. The third e-mail in the chain is from the Secretary to the Financial Management Board back to the Deputy Minister and to the Secretary to the Cabinet. In its explanation to me, the public body indicates to me that this was a discussion produced in confidence by a public body regarding an opinion brought forward by legal division and claims that it is subject to privilege pursuant to section 15 of the Act.

Although the legal opinion itself is subject to the discretionary exemption provided for in section 15, there is nothing more than a passing reference to the fact that a legal opinion had been provided in this exchange of e-mails. There is nothing in any of the messages that reveals the nature of the legal opinion. Without more, I am not satisfied that this record would be protected from disclosure pursuant to section 15. Even if it were, as noted above, there must be some indication that discretion has been

exercised in denying access and there is no suggestion that the pros and the cons of disclosure have been considered.

Document 8 (Tab 21 of materials provided by public body)

This record is an e-mail from the Director of Labour Relations to an Acting Director with the Department of Justice. The public body claims that it is not responsive to the Applicant's request. I agree.

Document 9 (Tab 22 of materials provided by public body)

This is another e-mail, this time from legal counsel to the Director of Labour Relations. The public body claims that it is exempt from disclosure pursuant to section 15 of the Act in that it is privileged communication between legal counsel and the public body. Although I agree that this e-mail is privileged communication between legal counsel and the public body, I see no evidence that any discretion was exercised in the refusal to disclose it to the Applicant. As in all other instances in which a discretionary exemption has been relied on in this matter, the public body appears to assume that because it falls under one of these sections, it simply is not to be disclosed. The discretion granted by the Act, however, must be exercised and be seen to be exercised.

Document 10 (Tab 23 of materials provided by public body)

This record is two separate chains of e-mail records. The first in the series starts with the same e-mail discussed above as Document 9. The second in the series shows that the same e-mail is being forwarded to a Manager with the department in which the Applicant was formerly employed with the simple message "FYI". With respect to that portion of the record which is the same as Document #9, the same considerations apply as discussed above. I do not believe that the balance of the record falls under the protection of section 15 and this part of the record should be disclosed to the Applicant.

The second chain begins, once again, with the e-mail discussed in Document 9. It is followed by the e-mail discussed above. The Manager provides a response and the Director of Labour Relations responds back. Although the chain begins with an e-mail that is subject to section 15 of the Act and, therefore, subject to a discretionary exemption, the balance of the e-mail discussion is not correspondence between the public body and its legal counsel. Nor, in fact, does the balance of the discussion make any reference to the specifics contained in the correspondence from legal counsel. The second, third and fourth e-mails in the chain really have nothing to do with the first e-mail. In my opinion, other than the first e-mail in this chain, the remaining exchange is not protected from disclosure pursuant to section 15.

Document 11 (Tab 24 of materials provided by public body)

This is an e-mail exchange between legal counsel and the Secretary of the Financial Management Board. The public body claims that it is privileged correspondence between legal counsel and the public body and is therefore protected from disclosure pursuant to section 15 of the Act. Once again, although I agree that the subject matter of this e-mail exchange is subject to section 15, there is no indication that any discretion was exercised in deciding not to disclose it to the Applicant.

Document 12 (Tab 25 of materials provided by public body)

This is a Briefing Note prepared by a Labour Relations Officer and is, on its face, clearly directed to the Chairman of the Financial Management Board. The public body claims that it is, therefore, exempt from disclosure pursuant to section 13(1)(d) of the Act. Because this record, on its face, was prepared as a briefing for the Chairman of the Financial Management Board, I have no problem in supporting the public body's refusal to disclose this document based on section 13(1)(d).

Document 13 (Tab 26 of materials provided by public body)

This is another e-mail chain. Once again, it begins with the record discussed as Document 9. The second e-mail in the chain is from the Director of Labour Relations back to legal counsel. The third and fourth e-mails are also between the same individuals and on the same general topic. I am satisfied that this entire record is “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”. As such, it is subject to the discretionary exemption provided for in section 15 of the Act. My comments with respect to the exercise of that discretion already set out apply here as well.

Document 14 (Tab 27 of materials provided by public body)

This record is a Briefing Note dated December 2003 which, on its face, has been prepared for the Chairman of the Financial Management Board. The Brief deals with a number of Labour Relations issues, one of which is the Applicant’s situation. The public body claims that this Brief is exempt from disclosure pursuant to section 13(1)(a) of the Act. Having reviewed the record, I agree.

Document 15 (Tab 28 of materials provided by public body)

This record consists of two separate e-mail chains. The first begins with the e-mail discussed as Document 9. The second is an e-mail from legal counsel to the Manager of Labour Relations and Equal Pay. The third e-mail in the chain is from the Manager of Labour Relations and Equal Pay back to the lawyer. I am satisfied that this exchange constitutes “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”. As such, it is subject to the discretionary exemption provided for in section 15 of the Act. My comments with respect to the exercise of that discretion already set out apply here as well.

The second chain of e-mails includes all of the exchanges of the first chain. In addition, there are two more e-mails from employees of the public body and the lawyer. Again, I am satisfied that these exchanges constitute “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” and my comments about the exercise of discretion apply.

Document 16 (Tab 29 of materials provided by public body)

This appears to be another Briefing Note. There is nothing on the face of the note that indicates who it was prepared for, although it appears to have been prepared by the Director of Labour Relations. The public body’s brief response to my inquiry indicates that it was prepared for the Minister, who is both a member of the Financial Management Board and the Executive Council. This appears to be the same Briefing Note that was discussed as part of Document 4 (the second item in that document). The comments made above with respect to the record, therefore, apply.

Document 17 (Tab 30 of materials provided by public body)

This record is entitled “Staffing Appeals Committee Report” and deals with the result of an appeal by the Applicant against the appointment of another individual to a position with the government in which he was interested. The public body indicates that it disclosed this record to the Applicant in a severed form. The public body has removed from this record only the successful candidate’s name and other personal information about the third party, the disclosure of which is presumed to be an unreasonable invasion of that person’s privacy, pursuant to section 23(2) of the Act. I have no concerns about how this record was edited.

CONCLUSION AND RECOMMENDATION

My recommendations, therefore, are as follows:

Document 1 - There is no indication that this record was prepared for a member of the Executive Council or the Financial Management Board and it cannot, therefore, be protected from disclosure pursuant to section 13 of the Act. The onus is on the public body to establish that the Applicant has no right of access and they have not done so in this case. However, the record does meet the criteria of a discretionary exemption as provided in section 14. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose the record. The Applicant should be provided with a detailed explanation for their decision.

Document 2 - The public body has not met the onus of establishing that the Applicant is not entitled to receive this record under section 13 of the Act. However, the record does meet the criteria of a discretionary exemption as provided in section 14. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose the record. The Applicant should be provided with a detailed explanation for their decision.

The e-mail accompanying this record should be disclosed.

Document 3 - This record is subject to a discretionary exemption pursuant to section 15 of the Act. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose the record. The Applicant should be provided with a detailed explanation for their decision.

The e-mail accompanying this record should be disclosed.

Document 4 - This record consists of two Briefing Notes.

The public body has not met the onus of establishing that the Applicant is not entitled to receive either of these documents under section 13 of the Act. However, both of the Notes do meet the criteria of a discretionary exemption as provided in section 14. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose either or both parts of this record. The Applicant should be provided with a detailed explanation for their decision.

The e-mail accompanying this record should be disclosed.

Document 5 - The first of the two Briefing Notes that make up this record has already been disclosed to the Applicant in response to his Request for Information. There is no reason, therefore, to deny him access to it when it appears in another context. With respect to the second Briefing Note that forms part of this record, the public body has not met the onus of establishing that the Applicant is not entitled to receive this record under section 13 of the Act. However, the record does meet the criteria of a discretionary exemption as provided in section 14. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose the record. The Applicant should be provided with a detailed explanation for their decision.

The e-mail accompanying this record should be disclosed.

Document 6 - The first of the two documents which comprise this records meets the test for a discretionary exemption under section 14 of the Act. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose the record. The Applicant should be provided with a detailed explanation for their decision.

The second of the two documents does not meet the test for a discretionary exemption under section 14 of the Act as it is nothing more than a chronology of facts. It should be disclosed to the Applicant.

Document 7- The chain of e-mails comprising this record does not fall under section 15 of the Act and should be disclosed to the Applicant.

Document 8 - Document 8 is not responsive to the Applicant's request and need not, therefore, be disclosed. I make no further recommendation with respect to this record.

Document 9 - This record constitutes correspondence between legal counsel and the public body and is, therefore, subject to a discretionary exemption pursuant to section 15 of the Act. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose the record. The Applicant should be provided with a detailed explanation for their decision.

Document 10 - There are two documents comprising this record.

The first chain of the first document (i.e. the part that is the same as Document #9) should be treated in the same manner as outlined above. The balance of the document does not appear to be subject to any statutory exemption and should be disclosed to the Applicant.

With respect to the second document, the first chain in the e-mail is once again the same as Document #9 and should be treated in the same matter as outlined for Document #9. The balance of chains in the e-mail do not qualify as correspondence between legal counsel and the public body and I therefore recommend that they be disclosed. Depending on what the public body decides to do when it exercises its discretion, editing may be necessary.

Document 11 - This record constitutes correspondence between legal counsel and the public body and is, therefore, subject to a discretionary exemption pursuant to section 15 of the Act. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose the record. The Applicant should be provided with a detailed explanation for their decision.

Document 12 - This record is protected from disclosure pursuant to section 13(1)(d) of the Act. I make no further recommendation with respect to this record.

Document 13 - This record constitutes correspondence between legal counsel and the public body and is, therefore, subject to a discretionary exemption pursuant to section 15 of the Act. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose the record. The Applicant should be provided with a detailed explanation for their decision.

Document 14 - This record is protected from disclosure pursuant to section 13(1)(a) of the Act. I make no further recommendation with respect to this record.

Document 15 - This record constitutes correspondence between legal counsel and the public body and is, therefore, subject to a discretionary exemption pursuant to section 15 of the Act. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose the record. The Applicant should be provided with a detailed explanation for their decision.

Document 16 - The public body has not met the onus of establishing that the Applicant is not entitled to receive this record under section 13 of the Act. However, the Briefing Note does meet the criteria of a discretionary exemption as provided in section 14. I recommend that the public body exercise its discretion and determine, based on all the circumstances, whether or not they should disclose this record. The Applicant should be provided with a detailed explanation for their decision.

Document 17 - In my opinion, the public body properly edited this record so as to remove all reference to the personal information of a third party and I make no further recommendation with respect to this record.

Finally, I note that in its response to the Applicant's Request for Information, the public body indicated to the Applicant that one category of records requested was not being provided because they were in the possession of another public body. There is no indication that that portion of the Applicant's request was forwarded to the appropriate public body. In my opinion, there is a positive obligation to respond to all specific requests for information. If the record is not in the possession of the public body from whom the record was requested, it should either be sought from the other public body or, perhaps more appropriately, transferred to the other public body pursuant to section 12 of the Act. That was not done in this case and I recommend that the Financial Management Board Secretariate take steps to ensure that the other public body is aware of the request so that it can respond to the Applicant.

Elaine Keenan Bengts
Northwest Territories
Information and Privacy Commissioner