NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER

Review Report 18-174

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File: 17-160-4
January 23, 2018

BACKGROUND

On January 23, 2017, the Applicants, with the assistance of counsel, submitted a written Request for Information to the Office of the Chief Coroner for the Northwest Territories, seeking

> . . all records in the custody or under the control of the Coroner Service with respect to [A.B.] including his “personal information" as that term is defined in section 2 of the Act. I expect to receive, as part of the disclosure, the following:
>
> Report of Coroner,
> Final Autopsy Report; and
> Toxicology Report.

The Applicants were the Administrators of the estate of A.B. who died as a result of a workplace accident.

A total of 99 pages of responsive records were identified. Ninety-four records were disclosed, some with redactions. Five records were withheld in full. Those records were:

a) three reports
b) one set of notes and
c) 29 photographs

all created by the R.C.M.P. The Department relied on section 16(1)(a)(i) and section

16(1)(c) of the Act in denying access to these latter records.

Some of the records disclosed to the Applicants were partially redacted, with the Department relying on Section 16(1)(a)(i), Section 23(2)(a), and Section 23(2)(h)(i) for those sections of the records which were withheld.

The Applicants questioned the application of section 16(1)(a) of the Act and argued that the public body did not demonstrate, and could not demonstrate, that the disclosure of the records in question would be reasonably expected to impair relations between the Coroner's Office and the R.C.M.P. Further, they suggested, even if the criteria for the application of section 16(1) had been established to exist, the public body failed to exercise any discretion in making the decision not to disclose the records in question. No explanation was provided as to how or why disclosing the non-disclosed records would harm the Department's relationship with the R.C.M.P. nor did it appear that the GNWT made any effort to discuss the matter with the R.C.M.P. or to obtain their thoughts on whether or not the information in question might be disclosed.

With respect to section 23, the Applicants argue that section 23 does not apply to prevent the disclosure of personal information where that information reveals "only that the individual was acting in a formal, representative, professional, official, public or employment capacity, unless that information also has a personal dimension" (Alberta Order F2008-028). The Applicants further argue that in determining whether the disclosure would amount to an unreasonable invasion of a third party's privacy, the public body must consider whether the disclosure is desirable to subject the public body to public scrutiny and they refer to Alberta Order F2014-16 in which it was determined that, in determining whether public scrutiny is desirable, the following factors should be considered:

1. whether more than one person has suggested public scrutiny is necessary;
2. whether the applicant's concerns are about the actions of more than one person within the public body; and

3. whether the public body has not previously disclosed sufficient information or investigated the matter in question.

THE ISSUES

The issues to be addressed in this review are the following:

a) Did the public body properly apply Section 16(1)(a) and Section 16(1)(c) in refusing to disclose certain records or portions of the records responsive to the Request for Information?

b) Did the public body properly apply section 23(1) to refuse the Applicant access to certain records or portions of records responsive to the Request for Information?

THE DEPARTMENT'S SUBMISSIONS

The Department pointed out, as a preliminary matter, that portions of the request from the Applicants were handled as a "routine disclosure" matter and were provided to the Applicant outside of the *Access to Information and Protection of Privacy Act*. The records disclosed pursuant to the *Act* total 42 pages.

Section 16

With respect to the 7 pages of documents and 29 photographs which have been withheld in full pursuant to section 16 of the Act, the Department argues that these were all records "created by the R.C.M.P. and disclosed to the Coroner's Office in order to assist in the Coroner's investigation" of the death of A.B. They note that, at the time of the Request for Information and at the time that they responded to the Request for Review, the case was "under investigation". The public body argues that documents received by the Coroner's Office from the R.C.M.P. are always considered to have been supplied in confidence. They note:

> This practice has been routinely established between the Coroner's Office and the R.C.M.P.. It is important to note that the R.C.M.P. provides the Coroner's Office with ongoing assistance and support in relation to the investigation of deaths throughout the Northwest Territories on a routine basis.

They argue that disclosing the information provided in confidence would significantly harm the Department's relationship with the R.C.M.P. and would affect the R.C.M.P.'s willingness to share information with the Coroner's Office. They note that they did not seek the R.C.M.P.'s consent to the disclosure of these records as "it is understood that R.C.M.P. records held by the Coroner's Office will not be disclosed, particularly in the matter of an active investigation".

Section 23

The Department argues that section 23 of the Act protects the personal privacy of third parties and establishes a mandatory exception for personal information where the disclosure would result in an unreasonable invasion of the privacy of a third party. They have addressed each of the instances in which the redaction has been questioned by the applicant as follows:

a) on several pages they note that the information redacted is the personal email address of individuals undertaking work on behalf of the Coroner's Office on a " fee for service" model and who not have GNWT email addresses.
b) they have redacted the names of individuals employed in the private sector.
c) in the case of one redaction, on review the public was able to more accurately identify the individual referred to and disclosed the redacted name.
d) in several instances, the information was the name of a family member of A.B.;

e) in one instance, the information redacted was the work email address for a member of the R.C.M.P.. The department notes that it is their standard practice to protect R.C.M.P. email addresses as these are not always publicly available. They decided to redact the information in this case to facilitate a timely disclosure of the requested documents rather than to do a third-party consultation which could have delayed the response by six months or more

f) in one instance, the name of an RCMP officer was redacted.

THE APPLICANT'S RESPONSE

I invited the Applicants to respond to the Department's submissions and they did so. Specifically, they argue that the matter of the death of A.B. is not under investigation. Rather, they say, it is a matter that is being prosecuted by the WSCC of the Northwest Territories. They attached a copy of court documents to support this argument. They say that the Chief Coroner was aware of the prosecution prior to the date of the Department's response provided in this Review. They also note that the public body has not relied on section 3(1)(c) of the Act which provides that the Act does not apply to "a record relating to a prosecution where all proceedings in respect of the prosecution have not been completed".

The Applicant also argued that just because a practice has been routinely established between the Coroner's Office and the R.C.M.P. or any other office, that does not necessarily make the practice legitimate. Further, they note that the is no evidence to support the Department's statement that if the information in question were disclosed to them that the disclosure would "significantly harm" the Department's relationship with the R.C.M.P. or affect the willingness of the R.C.M.P. to provide the same information in the future.

The Applicants further note that it is improper for the Department to have redacted information in order to avoid the third-party consultation process that the Department says would have been necessary pursuant to section 23 of the Act.

The Applicants also argue that the use of personal email account by deputy Coroners is a significant security concern in that private email accounts are far more vulnerable than emails within the GNWT system and that the use of third party email providers puts highly sensitive personal information at risk.

Finally, the Applicants suggest that the amount of information disclosed to the Applicants about the third-party family member of A.B. was sufficient to identify that family member to the Applicants even without disclosing the name and that, as a result, the third-party family member's privacy has been breached notwithstanding the department's refusal to disclose the name.

DISCUSSION

I have the benefit of being able to review all of the records in their unedited and original form to assist me in considering the arguments made by both the Applicants and the Department in this matter. The situation in this case, involving the death of a worker and an attempt by the Administrators of the worker's estate to obtain information they need to make decisions about the estate, creates a difficult balancing act. The public body in this case points out that the right to privacy is not dispelled simply by reason of the fact that an individual dies. That right continues after death. The Act, however, provides at Section 52 that

> 2.(1) Any right or power conferred on an individual by this Act may be exercised
>
> (a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to

the administration of the individual’s estate...

As a preliminary issue, therefore, it is important to acknowledge that while the Applicants in this case provided the public body with evidence that they were the duly appointed Administrators of A.B.’s estate, they were not asked to prove, nor did they provide any evidence to prove, that the information they requested was required for the purpose of administering A.B.’s estate. That said, I am satisfied that the information requested is the kind of information that would be necessary to make decisions about settling or litigating or otherwise dealing with any claims the estate might have as a result of A.B.’s death and that the Applicants were, therefore, entitled to receive the information requested.

Section 23

Section 23 prohibits the disclosure of personal information where the disclosure would constitute an unreasonable invasion of the privacy of a third party.

> 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.

Subsection (2) of section 23 outlines circumstances in which there is a presumption that disclosure of personal information will amount to an unreasonable invasion of a third party’s privacy. Subsection 23(4), on the other hand, outlines circumstances in which there will be no unreasonable invasion of privacy, including where

> (e) the personal information relates to the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council.

Section 23 creates a mandatory rule - if the information would result in an unreasonable invasion of a third party's privacy, it cannot be disclosed.

It is to be noted, however, that the mere appearance of the name of an individual is not sufficient to prohibit disclosure. The disclosure of the information in question must also amount to an unreasonable invasion of privacy. Even if the information falls within one of the presumptions raised by section 23(2), presumptions are, by definition, rebuttable.

The public body has redacted a "personal" email address several times. The email address redacted is the personal email address of one of the people who, on a part time contract basis, acts as the Community Coroner in one of our communities. There is nothing in section 23(2) which raises a presumption that the disclosure of this information would result in an unreasonable invasion of privacy. That said, I have often found that a personal email address should be protected from disclosure. The email address in question consists of the Community Coroner's first and last name followed by the domain name. In this case, the name of the Community Coroner is known to the Applicants and, in fact, is known to the public. The disclosure of the "name" portion of this email address would not, therefore, amount to an unreasonable invasion of his privacy. The disclosure of the domain name, together with the Community Coroner's name, however, would in my opinion amount to an unreasonable invasion of his privacy. I therefore **recommend** that the name portion of this email address be disclosed, but that the domain name remain masked. This redaction appears twice - once on page 62 and once on page 81.

Before leaving this point, I agree with the Applicants that Community Coroners who collect significant and often sensitive personal information about individuals on behalf of and as agents (if not employees) of the Government of the Northwest Territories should not be using personal email accounts, particularly web-based accounts, to communicate in relation to these matters. The risk of a serious breach of privacy increases significantly when one goes outside the GNWT secure system. I therefore **recommend** that steps be taken, as soon as possible, to provide Community Coroners with GNWT

email addresses which they can use to communicate in relation to their work as Community Coroners. In the alternative, new directives should be implemented which prohibits Community Coroners from communicating via personal email accounts unless the communication or the attachment is encrypted.

On page 68, the public body has redacted a name in the second paragraph of the email on the page. This name has since been disclosed and I will therefore make no further comment on this redaction. However, further down the page, the public body has redacted part of a sentence which relates to A.B.'s health records and the content of those records. The public body relies on section 23(2)(a) for refusing to disclose this information. Section 23(1)(a) provides that an unreasonable invasion of privacy is presumed where the information relates to medical history, diagnosis, or condition. Keeping in mind that the Applicants, as Administrators of the estate, are only entitled to information that is required for the purpose of administering A.B.'s estate, I agree with the public body that this small piece of information should remain undisclosed. It has nothing to do with the administration of A.B.'s estate and I can think of no situation in which it might be relevant to anything about the estate. I **recommend** that this information remain masked.

On page 69 the public body has redacted the name and business email address of two employees of the funeral home which was engaged, presumably by the Applicants as Administrators of the estate, to assist with funeral and other arrangements for A.B. after his death. Also redacted is the name, address, phone and fax numbers for the funeral home. None of this information, in my opinion, would result in an unreasonable invasion of privacy of any third party if disclosed. Companies do not have "personal information" and are not entitled to any recourse under section 23. All of this is business information, not personal information. Furthermore, the name of the funeral home is disclosed elsewhere in the records.

The disclosure of the names and business email addresses of the employees in these circumstances do not, in my opinion, raise a concern about the unreasonable invasion of privacy contemplated by section 23. Business contact information has generally been

held to be public information and would be protected from disclosure only in unusual circumstances. I **recommend** that this information be disclosed.

Two pieces of information about a third-party individual have been redacted from page 71. The public body has said that it redacted this information so that they could disclose the document in a timely manner. The alternative would have been to do a third-party consultation pursuant to section 26 of the *Access to Information and Protection of Privacy Act*. They chose not to do that.

I agree with the public body in this case. The information in question is information about a third party, the disclosure of which would arguably result in an unreasonable invasion of that individual's privacy if further disclosed by the Applicants. In the context of the communication, it is possible and even probable that the Applicants will be able to identify the person being discussed even with the redacted information. The caution in not disclosing the information arises from the fact that once the record leaves the Department of Justice, there is no longer any control over how that record will be used or, more importantly, disclosed by the Applicants. The third party is entitled to expect that the specific information will be withheld, even if the context of the communication and the circumstance surrounding it will possibly identify him to the Applicants.

Contrary to the arguments made by the Applicants, public bodies are entitled, under the Act, to redact names and other third-party information rather than conduct a third-party consultation in circumstances such as this. Section 26 of the Act provides that "where the head of a public body is considering giving access" to a record that may contain information the disclosure of which would be an unreasonable invasion of privacy, a third-party consultation must first be undertaken. It does not say that any time access to third party information is refused there must be a third-party consultation. In this case, the public body correctly determined that the disclosure of the information in question would amount to an unreasonable invasion of the third party's privacy and that the disclosure was prohibited.

On page 82, the public body has refused to disclose the business email address of an R.C.M.P. officer, arguing that the disclosure of this information would result in an unreasonable invasion of the officer's privacy. They state (without supporting evidence) that the business email addresses of RCMP officers are not publicly available and that this is why they have withheld the information.

While I understand that there may be no overtly public access to a list of R.C.M.P. officers' names and email addresses, I am also fairly confident that the R.C.M.P., like every other business or government operation in today's world, regularly conduct business via email and provide their email addresses to those in the public with whom they need to communicate. Unless there is a "security" reason not to disclose (e.g., is the RCMP Officer in some sort of special operations unit, involved in a covert operation, or the disclosure of the email would create some sort of risk to infrastructure), I don't see any grounds to withhold a work email address. Nothing of that sort appears to be in play here. Section 23 does not apply. I **recommend** that this email address be disclosed.

Page 86 is a form entitled "Death Registration Statement". It has been completed with the details of the A.B.'s death. It appears that this a GNWT form but no information has been provided to indicate what its purpose is. In this case, the name, contact information, relationship to the deceased and signature of the "Informant" has been masked. The informant is a "third party" as defined in the Act. Once again, while it is probable that the Applicants in this case know all of the information that has been redacted, the public body is required to protect the further disclosure of the information. I am satisfied that it has been properly redacted pursuant to section 23(1) of the Act. If the Applicants require a copy of this record with all of the information intact, I would suggest that they obtain the consent of the Informant and request the record again.

Similarly, the public body has deleted the contact information for the same third party on page 90. The same analysis applies. In addition, the name of another third party has been redacted from the field entitled "Found by:" The records that have been disclosed make it obvious that the Applicants are aware of the name of this individual. However, once again, the department must be cognizant of the fact that they lose control over the

further dissemination of the record once it leaves their possession. I am also satisfied that the further disclosure of this information may result in an unreasonable invasion of the individual's privacy. I agree, therefore, that this information has been properly withheld.

Finally, on pages 94 and 95, the public body has withheld several pieces of information pursuant to section 23(1). The first redaction is a reference to a third party by way of his relationship to A.B.. No name is attached, just a family relationship. I am not convinced that the disclosure of this information would result in an unreasonable invasion of the third party's privacy. I **recommend** that this information be disclosed. The next piece of information is the business phone number of the corporate employer of A.B.. Corporate information is not protected from disclosure pursuant to section 23 and I **recommend** that this phone number be disclosed. This is followed by the name of A.B.'s supervisor, which has also been withheld. Again, I am fairly certain that the Applicants are well aware of the name of this individual. That said, the disclosure of this information to the Applicants may result in a further disclosure by the Applicants so the department was right to be cautious in disclosing the information. I am not entirely convinced, however, that the disclosure of this name would result in an unreasonable invasion of his privacy in that his involvement with the company in question is easily available and widely known and even advertised by the company. I **recommend** that the public body undertake a third-party consultation with the individual involved pursuant to section 26 and reconsider its decision with respect to the disclosure of this name. This recommendation is, however, subject to the Applicants confirming that they require this record with the name intact. Alternatively, the Applicants could provide the public body with the consent of the third party to disclose the record with his name intact.

Finally, the public body has redacted what appears to be a business cell phone number for an employee of the WSCC who was involved in the investigation. As noted above, the disclosure of business contact information is not likely to result in an unreasonable invasion of a third party's personal privacy. I therefore **recommend** that this information be disclosed.

Section 16(1)

Section 16(1) of the *Access to Information and Protection of Privacy Act* provides public bodies with the discretion to refuse to disclose information where that disclosure could be reasonably expected to impair relations between the Government of the Northwest Territories and the Government of Canada or one of its agencies or to reveal information received, explicitly or implicitly, in confidence from a government or government agency.

When relying on section 16(1)(a), the public body must establish:

a) a reasonable expectation
b) that the disclosure will impair the intergovernmental relationships involved

When relying on section 16(1)(c), the public body must establish:

a) a reasonable expectation
b) that the disclosure will reveal information received explicitly or implicitly in confidence from another governmental agency

In this case, the other government agency involved is the R.C.M.P. who were involved in the investigation of the death of A.B..

This is a discretionary exemption, which means that any discussion about the proper application of exemptions to disclosure must start with a review of the stated objectives of the *Access to Information and Protection of Privacy*. Section 1 of the Act states that one of the purposes of the Act is to make public bodies more accountable to the public by giving the public a right of access to records held by public bodies with specific and limited exceptions. Courts in Canada have consistently held that access to information legislation in this country is quasi constitutional in nature and that exceptions should be narrowly interpreted and applied. Disclosure is always the starting point.

As noted in my Review Report 12-108,

> The purpose of exceptions is to protect a public interest that is served by withholding information. Section 16(1)(a) protects the public interest insuring that relations between the GNWT and another government are not harmed by the disclosure of information. Harm to intergovernmental relations of the GNWT affects not only a public body and the Applicant, but the citizens of the NWT.

I have also commented in a number of previous Review Reports on what public bodies must do in order to justify the non-disclosure of any information where the applicable exception requires a "reasonable expectation" of some form of harm. So the first part of the test that must be met is that the public body must establish that there is an expectation of harm and what that harm might be. The party who is asserting the claim must provide objective evidence of three things:

a) there must be a clear cause and effect relationship between the disclosure and the harm;
b) the disclosure must cause harm and not simply interference or inconvenience;
c) the likelihood of harm must be genuine and conceivable.

With respect to section 16(1)(c), there is no requirement that the disclosure might result in some kind of harm. Rather, section 16(1)(c) requires only that the disclosure is reasonably likely to reveal something that was provided to the public body in confidence. Unlike Alberta, where the legislation requires an anticipation of harm to the intergovernmental relationship where a confidence is broken, our legislation requires only that the disclosure will reveal a confidence, regardless of the consequences of that disclosure. The issue for us is whether or not the information was provided explicitly or implicitly in confidence.

The first record which the public body has redacted pursuant to Section 16 appears on page 79 of the package of responsive records. The public body claims that the disclosure of this record would be “reasonably expected” to impair the intergovernmental relationship between the Coroner’s Office and the R.C.M.P. The record itself is an email from the Coroner’s Office to the R.C.M.P. in which the R.C.M.P. are asked for assistance. There is nothing in this email that might be “reasonably expected” to impair the relationship between the two agencies. It does nothing more than confirm that the two agencies worked together on the investigation of the incident in question, which is something required by legislation. Section 16(1)(a) does not apply and I **recommend** that the content of this email be disclosed.

The next instance in which Section 16 is relied on to justify a refusal to disclose information is on page 91. This is a form on which the Community Coroner is reporting the course of events surrounding A.B.’s death. One sentence in the document refers to the R.C.M.P. and a step taken by the R.C.M.P.. Once again, there is nothing in this statement that reveals anything that, on an objective analyses, would likely result in an impairment of the relationship between the R.C.M.P. and the Coroner’s Office. I **recommend** that the deleted portion of this record be disclosed.

Pages 94 and 95 are entitled “Coroner notes” from the date of the accident. The section of the notes which relate to the coroner’s discussion with a member of the R.C.M.P. has been redacted in full, with the department relying on Section 16(1)(c). They say that the information imparted to them was provided by the R.C.M.P. “in confidence”. The only evidence they have that confidence was intended with respect to this conversation is a “routinely established” practice between the Coroner’s Office and the R.C.M.P.. It appears that the Coroner’s Office takes the position that **any** conversation between the R.C.M.P. and the Coroner’s Office is automatically deemed to be confidential. Further, they argue that disclosing such information provided in confidence would significantly harm the Department’s relationship with the R.C.M.P. and would affect the R.C.M.P.’s willingness to share information with the Coroner’s Office and for these reasons there will always be a blanket policy that such information will not be disclosed.

I have trouble both the argument and with such a blanket policy.

As noted, the R.C.M.P. provides the Coroner's Office with ongoing assistance and support in relation to the investigation of deaths throughout the Northwest Territories on a routine basis. This is not, however, done out of the goodness of their hearts. It is a legislated requirement under the *Coroner's Act*. For example, Section 8(3) of that Act provides that:

> A police officer who has knowledge of a reportable death shall immediately notify a coroner of the death.

Section 11 of the same act authorizes a coroner to, among other things,

> require the production of, examine and copy any records relating to the deceased or the circumstances of the death that the coroner believes are material to the investigation;

where she believes the information is necessary for conducting her investigations under the Act.

Section 11(3) provides that in some circumstances, the Coroner can authorize the R.C.M.P. to act has her agent to collect information.

Section 16(1) of the Coroner's Act provides:

> 16.(1) A coroner may obtain the assistance of police officers in the conduct of an investigation or inquest.
> ...
> (3) Where a police officer has made a police report on a death that is subject to an investigation or inquest under this Act, the police officer shall forward a copy of that report to the coroner conducting the investigation or inquest, as the case may be.

The suggestion that the R.C.M.P. may no longer co-operate in the provision of information to the Coroner's Office, therefore, carries little weight. Furthermore, there is nothing in the *Coroner's Act* which suggests that information being provided by the R.C.M.P. or another police service is intended or required to be received on a confidential basis. In fact, it is clear from the Act that the Coroner's office is free to use the information as it thinks fit to undertake the responsibilities of the office.

In this particular case, there is nothing in the comments made by the R.C.M.P. officer to the Community Coroner which was not generally known or observable by anyone at the site of the accident. There is no comment in the report which suggests fault or even the cause of the accident. It contains only facts as observed by the officer or obtained from the witnesses. More importantly, there is nothing in this segment that is not already known to the Applicants through other sources. I am not convinced that this particular discussion between the Community Coroner and the R.C.M.P. officer was considered to be confidential - either explicitly or implicitly. I am not convinced that section 16(1)(c) applies. Even if I am wrong, and the information in this section of the report meets the criteria for an exception pursuant to Section 16(1)(c), the public body must exercise its discretion and clearly that has not been done in this case. In exercising that discretion, the public body should consider such things as whether or not the information is already within the public realm, whether the information would cause the R.C.M.P. to cease working with the Coroner's Office in similar circumstances or truly impair the relationship between the two agencies. In the circumstances of this case, all of these factors would suggest that discretion to withhold the information should not be exercised. The information in question had been well publicized in local media. Legislation requires police to provide information and reports to the Coroner's Office, whether or not they want to, and the kind of information involved in this case is unlikely to have caused any riff at all between the R.C.M.P. and the Coroner's office, particularly if the Coroner's Office took the time to consult with the R.C.M.P on the matter. I **recommend** that this segment be disclosed. At the very least, I **recommend** that the public body consult with the R.C.M.P. to determine whether they have any objections to the disclosure of this information.

The next record withheld is a two-page report beginning on Page 99 of the responsive package. It is entitled “General Report” and consists of a narrative report prepared by the R.C.M.P. officer who attended at the scene of the accident. The public body has indicated that it is relying on both Section 16(1)(a) and 16(1)(c) of the Act for its refusal to disclose this record in its entirety. The bottom of the form contains the words “Protected B” on both pages. From what I could determine from my own research, this designation is applied to information that, if compromised, could reasonably be expected to cause serious injury outside the national interest and often include information, which if released, would reasonably compromise individual privacy e.g., loss of reputation or competitive advantage.

This record is a formal report prepared by the R.C.M.P. as a result of the officer having been assigned to the case. The existence of the designation at the bottom of each page as being “Protected B” lends credence to the suggestion that the R.C.M.P. expect some degree of discretion from the Coroner’s Office in relation to how the record is used. While it contains some of the same information outlined on pages 94 and 95 above, it is far more detailed and, so long as any investigation, whether it be by the R.C.M.P., by the WSCC or by the Coroner’s Office, was ongoing, I am willing to accept that the report itself was intended by the R.C.M.P. to be confidential. I am satisfied, therefore, that section 16(1)(c) applied to the report.

This said, the public body cannot have a blanket policy that they simply will not disclose information obtained from the R.C.M.P. whenever it is said to be “Protected B” information. The public body must still exercise its discretion. In this case, I understand that at the time the Request for Information was made, when the response was provided and when the Request for Review was made to this office, the investigation of the accident was still ongoing. That said, as of the date of the writing of this report, I understand from local news reports that the investigation is now complete, and prosecutions are complete, but for sentencing which is scheduled to take place within weeks. The circumstances surrounding the “confidentiality” of the report have changed. In the particular circumstances of this case, including

- the nature of the incident;
- the relationship of the Applicants to the deceased;
- the fact that all investigations and prosecutions as a result of the incident appear to be complete;
- the fact that there are no criminal code infractions involved; and
- much of the information contained in the report is a matter, at this point, of public knowledge,

I **recommend** that at the very least the Coroner's office consult with the R.C.M.P. with respect to the disclosure of all or at least portions of this Report and that the department then exercise its discretion to determine if parts or all of this report can now be disclosed.

Pages 101 and 102 are another formal report that has been prepared by the R.C.M.P. It is entitled "Sudden Death Briefing Note to Criminal Operations". This record does not have any designation that suggests that it is a protected document. It appears, however that it is normally an internal record for use within the R.C.M.P.. Its stated purpose is "to advise District of the initial investigation into the above captioned incident". It contains much of the same information as the previous record does. Assuming for the purpose of this report that the document was provided to the public body in confidence, the department must still exercise its discretion. The same considerations and the same **recommendations** apply to pages 101 and 102 as apply to pages 99 and 100.

Page 103 is a hand-written statement from a witness to the accident. I am assuming that this page forms part of the report produced at page 101 and 102. It too, has been withheld in full pursuant to section 16(1)(a) and 16(1)(c). Insofar as section 16 is concerned, this record should be treated in the same manner as discussed above. I would, however, **recommend** that it be edited so as to remove the name of the witness.

Page 104 is a fax cover sheet that contains nothing of substance and which is not subject to any exemption under the Act. I **recommend** that this page be disclosed.

The final page withheld from the Applicants is a document entitled “Preliminary Report of Death”. Once again, this appears to be a form completed by the R.C.M.P. for internal purposes and there is nothing on the page which suggests that the document is intended to be confidential. Furthermore, there is nothing in the record which is, at this point, not publicly available as a result of news reports and submissions made in open court. I am not convinced that the disclosure of this record would, at this point, impact in any way on the working relationship between the R.C.M.P. and the Coroner’s Office. Further, I am not satisfied that this record was provided to the Coroner’s Office in confidence or, if I am wrong in this, that the Coroner’s Office has exercised its discretion with respect to whether or not to disclose it. I make the same **recommendation** as noted for pages 99 and 100.

Finally, the public body has withheld a set of 29 photographs taken at the scene of the accident by the R.C.M.P. and provided to the Coroner’s Office pursuant to Section 16(3) of the Coroner’s Act. As noted above, this section requires police officers to provide the Coroner with a copy of their investigation report in relation to any reportable death. Once again, I have nothing before me other than a customary practices and understandings to suggest that these pictures were intended by the R.C.M.P. to be held in confidence. Furthermore, no charges under the criminal code resulted from this incident and charges under the *Safety Act* have been dealt with but for the sentencing at this point. At the time of the Request for Information and the Request for Review, the investigation was still ongoing and different considerations may have applied. At this point, however, I once again **recommend** that at the very least the public body consult with the R.C.M.P. with respect to the possible disclosure of the pictures in question.

Elaine Keenan Bengts
Information and Privacy Commissioner