

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER
Review Report 19-196**

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BACKGROUND

The Applicant made a request to the Department of Health and Social Services for access to

All internal and external communication including but not limited to letters, emails, directives and reports related to the design, development, launch, approval or legality of a 2017 research study (sometimes referred to as the Northern Territories Alcohol Study) on the impact of alcohol warning labels.

The Department determined that, before releasing the records, they needed to consult with third parties. After considering the input of the third parties, the department refused access to some of the responsive records. Relying on section 24(1)(b)(i), 24(1)(c)(i), 24(1)(c)(ii), and 24(1)(c)(iv) the public body withheld documents which had been supplied by the third party. Other information was withheld pursuant to section 16(1)(c). The Applicant asked this office to review the redacted items on the basis that the exceptions to disclosure were applied too broadly.

The public body identified 119 pages of responsive records. Of those, they withheld all but 5 pages in their entirety and disclosed the remaining 5 pages with content in the body of one email redacted pursuant to section 16(1)(a).

THE DEPARTMENT'S SUBMISSIONS

When the Department received the Request for Information and looked at the records involved, they were concerned about disclosing many of the records because they had been provided to the Department by third parties. They decided to consult with these third parties, ostensibly pursuant to section 26 of the *Access to Information and Protection of Privacy Act*. That section of the Act provides that:

- 26.(1) Where the head of a public body is considering giving access to a record that may contain information
- (a) the disclosure of which would be an unreasonable invasion of a third party's personal privacy under section 23, or
 - (b) that affects the interests of a third party under section 24, the head shall, where reasonably possible, give written notice without delay to the third party in accordance with subsection (2).

Section 23 prohibits the disclosure of records containing the personal information of an identifiable individual where that disclosure would amount to an unreasonable invasion of that person's privacy. Section 24 of the Act prohibits the disclosure of records where the disclosure would affect the business interests of a third party, including, among other things,

- where the records contain financial, commercial, scientific, technical or labour relations information obtained in confidence from a third party,
- where the disclosure could be reasonably expected to prejudice the competitive position of a third party, or
- where the disclosure could be reasonably expected to result in similar information not being supplied to the public body in the future.

Section 24(2) goes on to provide that a public body may disclose the kind of information detailed above with the written consent of the third party to whom the information relates.

In light of the fact that one of the third parties in this case was a provincial government agency in Ontario and the other was an employee of that government agency, I am not entirely sure that section 26 applied in this case so as to trigger the third party consultation process. That said, I have not been asked to review that aspect of the case, so I will not comment further.

The Department provided this office with copies of their correspondence with the third parties. One response was received from the provincial government agency. That agency indicated that they had received a similar request to the one received by the Department of Health and Social Services and that they had refused access on the basis that section 65(8.1)(a) of the *Ontario Freedom of Information and Protection of Privacy Act* provides as follows:

This Act does not apply....to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution.

I have asked the Information and Privacy Commissioner of Ontario whether his office had received a request for review of this decision and he advised that they had, and that the matter was currently unresolved.

In the case of the records in question, when asked by the Department for their input on disclosure of the records by the GNWT, the Ontario government agency asserted that the records:

are associated with research conducted or proposed by [A.B.] (associated with the University of Toronto) and [C.D.] (associated with the University of

Victoria).....Any disclosure of research records in response to an access request at this time would undermine the principles of academic freedom and competitiveness. These principles are foundational to [the Provincial government agency's] continued ability to conduct important ... research; a function that is core to [the Provincial government agency's] mandate.

Based in part on these submissions, the Department in this case decided to withhold most of the responsive records in whole.

The Department of Health provided the following explanation for its decision in this regard:

For clarity, the Department consulted with both the researcher, [A.B.], and [the Ontario government agency]. We were required to consult with both as [A.B.] plays two roles, one as the principle investigator and also as an employee of [the Ontario government agency]. Therefore we requested that they provide submissions from the perspective of a third party, as well as, a government public body.

The Department agreed with the submissions from [the Ontario government agency] and [A.B.] that the release of the information could reasonably be expected to cause harm under Section 24, specifically that it could harm the competitive position of the researchers and the [Ontario government agency] as well as compromise the results of the research. Further, when the request for access was received by the Department, the research was still ongoing and they were actively pursuing survey responses from volunteers.

If (sic) should also be noted that [the Ontario government agency] had received the same request and had denied the applicant access to the records. In light of that the Department felt that release of the records

would cause harm to intergovernmental relations under Section 16 and could jeopardize future dealings with [the Ontario government agency].

DISCUSSION

The department in this case has decided to withhold most of the records responsive to this request for information, relying on sections 16 and 24 to support their decisions.

Section 16

Section 16 provides that the head of a public body “may refuse to disclose” information which could reasonably be expected to impair relations between the GNWT and a provincial government or one of its agencies. This is a discretionary exception. If the information meets the criteria, the public body must still consider whether or not to disclose it. In order to meet the criteria for the exception, the information must be

- a) be reasonably expected
- b) to impair relations
- c) between the GNWT and another Canadian government agency

The Department has relied on this section to justify the redaction of a portion of one email chain involving a communication between officials of the Government of the Northwest Territories and officials of another Canadian government and also in support of its decision to refuse access to the entirety of 114 pages as discussed below.

The first item redacted is a paragraph on page 4 of the package of responsive records, which is an email between Andre Corriveau, the Territorial Medical Director with the Northwest Territories Health and Social Services Authority and an official of the Yukon Government. The email discusses the research study which is the subject of the request for information. No explanation was provided as to how the disclosure of this email might impair intergovernmental relations and I see nothing in the content that might

suggest that to be the case. Without that element of potential harm, the section does not apply. I **recommend** that the paragraph on page 4 of the package of materials be disclosed.

The department also relies on section 16 to justify withholding 114 of the 119 responsive pages in full. They argue that the Ontario government agency refused to disclose the information in question in response to a direct request for that information from the Ontario agency. If the GNWT were to allow access to these records in these circumstances, there is a reasonable expectation that relations between the two governments would be impaired.

I disagree for a number of reasons. Firstly, the Northwest Territories does not have a provision in its *Access to Information and Protection of Privacy Act* similar to the one relied on to withhold the information by the Ontario agency. What may be protected from disclosure in Ontario under their access and privacy laws is not similarly protected in the Northwest Territories.

Secondly, while the public body may have initially refused access to the information under the Ontario legislation, I have been advised by the Information and Privacy Commissioner of Ontario that the decision to refuse access is currently under review by the Office of the Information and Privacy Commissioner in Ontario and the public body may yet be ordered to disclose the records in question. They may not want to disclose them, but they must comply with the law and whether or not the information meets the criteria for an exception under the Ontario legislation is as yet undecided.

Thirdly, the information in these 114 pages was provided to the GNWT by the Ontario agency for the purpose of allowing the Ontario agency to do research involving residents of the Northwest Territories. It is not research that was initiated by the GNWT and it is not research that will necessarily benefit the people of the Northwest Territories. The Ontario public agency chose the Northwest Territories to do its research because the NWT presented a convenient study group. In order to do that research,

they had to apply for a research licence and provided the information in question in order to obtain that licence. In these circumstances, it cannot be said that the disclosure of the records would be reasonably be expected to impair relations between the Government of the Northwest Territories and the Government of Ontario. The Government of Ontario provided the information to the GNWT of their own accord and for their own purposes. Even if this results in the Government of Ontario not returning to the NWT to conduct research for its own purposes, I am not convinced that this amounts to circumstances which would “impair” the relationship between the two governments. This is particularly so in light of the fact that the information was provided on the basis that it would be subject to public scrutiny (see discussion below regarding section 24(1)(b) below).

The Department has not established that the disclosure of this information could be reasonably expected to impair the relationship between the NWT Department of Health and the Ontario government agency involved. In my opinion, section 16 does not apply.

Section 24

The section relied on for the majority of records withheld is section 24. The first thing to observe is that section 24 is a mandatory provision. If the information redacted or withheld falls within the criteria for the exemption, the public body is prohibited from disclosing it.

The second thing to observe is that the information involved is third party information, provided to the Government of the Northwest Territories for the purpose of obtaining a research licence. To the extent, therefore, that I recommend the disclosure of any information in the 114 pages of records which have been withheld, that recommendation comes with a further **recommendation** that, should the department accept my recommendation, notice should be given to the researcher and to the Ontario public agency pursuant to sections 27(2) and (3) of the *Access to Information and Protection of Privacy Act* and advise them of their right to seek a review of that decision

from this office within thirty (30) days of the date on which they receive the notice.

Section 24(1)(b)(i)

The public body argues that the information being withheld is “financial, scientific, technical or labour relations information obtained in confidence, explicitly or implicitly, from a third party”.

The public body has provided no further background about nature of the records or how they came to be in the possession of the Department. I must, therefore, look to the documents themselves for context. It appears from the correspondence which has been disclosed to the Applicant that it was determined at some point that the Ontario researchers would require an NWT Research Licence to conduct the intended research on whether advertising on liquor bottles had a deterrent effect on customers. For that purpose, an application was made to the Aurora Research Institute for that licence. All of the records in relation to this application were withheld in full, including:

- a) Proposal for Multiyear Research (1 page)
- a) a copy of the licence application (7 pages)
- b) an “Information Letter” (2 pages)
- c) a blank “Consent Form” (1 page)
- d) a blank copy of what appears to be a survey document intended to be used in the research to ask questions of participants (20 pages)
- e) a completed Ethics Review Board Application Form prepared for Ontario Health (24 pages)
- f) Ethics Approval Letter (1 page)
- g) Completed Application for Licence directed to Yukon Tourism and Culture (3 pages)

In addition, all of the following documents, which were appended to the Ethics Review Board Application Form for Ontario Health were also withheld in full:

- i) a completed "Appendix A" entitled "Additional Applicants" (4 pages)
- ii) "Appendix B" entitled "US Alcohol Warning Label" (1 page)
- iii) "Appendix C" entitled "Intervention Alcohol Warning Label" (1 page)
- iv) "Appendix D" entitled "Brief Screener - Initial Recruitment" (3 pages)
- v) "Appendix E" which appears to be a form letter to be sent to those who will be asked to participate in the research survey along with a blank consent to be signed by the participant (4 pages)
- vi) "Appendix F" which is a blank form entitled "Consent and Contact Information Form" (1 page)
- vii) "Appendix G" which is a blank form entitled "Survey - Recruitment (16 pages)
- viii) "Appendix H" entitled "Compensation Tracking Form" (2 pages)
- ix) "Appendix I" entitled "Email Invitation" (1 page)
- x) "Appendix J" and "Appendix K" with the titles "Text Reminder" and "Telephone Reminder Script" (both on 1 page)
- xi) "Appendix L" entitled "Brief Screener - Follow Up" (2 pages)
- xii) "Appendix M" entitled "Information Letter and Consent - Follow Up" (2 pages)
- xiii) "Appendix N" entitled "Follow-up" (15 pages)
- xix) "Appendix O" entitled "Email Reminder" (1 page)
- xx) "Appendix P" entitled "Electronic Participant Tracking Form - SAMPLE" (1 page)

Section 24(1)(b)(i) applies to:

- a) financial, commercial, scientific, technical or labour relations information
- b) obtained from a third party
- c) explicitly or implicitly in confidence

There is no requirement under subsection 24(1)(b)(i) to demonstrate that there would be harm to the third party as a result of the disclosure - only that the three requirements above are met.

The first question, then, is whether the information withheld is “financial, commercial, scientific, technical or labour relations” information. Without more background or explanation, there is nothing in these records that I would consider to be financial, commercial or labour relations information. The question, therefore, becomes whether the information can be classified as “scientific” or “technical” information. The Ontario Information and Privacy Commissioner has considered these definitions in reviewing the equivalent section of their legislation and has developed definitions as follows:

Scientific Information

Scientific information is information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information which also appears in this section [Order P-454].

Technical Information

Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, [IPC Order PO-1811/July 28, 2000] it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a

structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in this section [Order P-454]

Having had the opportunity to review the records which have been withheld, I conclude that the content of the records withheld contain, at least in part, information which relates to the researcher's hypotheses and methodology. I am satisfied that these portions of the records "relate to the observation and testing of specific hypothesis" and that the researcher is an expert in the field. The first part of the test has, therefore, been met, at least for some of the information in the records.

I am not convinced, however, that the information was provided explicitly or implicitly in confidence. The public body has provided no evidence to show that the records were provided to them explicitly in confidence. We must, therefore, consider whether there was an implicit understanding that the records would be held in confidence.

In this case, the documents withheld by the Department were submitted to the Aurora Research Institute of the Northwest Territories for the purpose of obtaining a licence to undertake scientific research in the Northwest Territories. The *Scientist Act* of the Northwest Territories provides, at section 2:

2. No person shall carry on scientific research in or based on the Territories, or collect specimens in the Territories for use in scientific research, unless
 - (a) he or she is the holder of a licence issued under this Act ...

In order to conduct research in the Northwest Territories, therefore, an application for a licence must be made. That application is submitted to the Aurora Research Institute. The Aurora Research Institute has a publication entitled "Doing Research in the Northwest Territories: A Guide for Researchers" published in January of 2019 and available at http://nwtresearch.com/sites/default/files/ari_guide_to_research_2019.pdf

This publication is helpful in assessing whether the application form and supporting documents are implicitly provided “in confidence”. On page 2 of the guide there is information about the Aurora Research Institute (ARI) and its mandate. That mandate includes “making scientific and traditional knowledge available to people of the NWT”. There are a number of statements made under the heading “Obtaining Research Licences and Permits” beginning on page 3 that indicate that information received in support of an application is not intended to be confidential, including the following:

“Through the licensing review process, information about your work is shared with northern residents.”

“You are advised to submit your licensing and related application(s) at least 3 months prior to the planned start date of field work as this ensures adequate time for review and feedback by NWT community organizations.”

“Research licensing in the NWT involves authorities at local, territorial and federal levels.”

“Many of these processes include provisions to ensure that local communities are well informed of upcoming research projects, and that the best practices are followed to ensure effective knowledge translation.”

“What differentiates the ARI’s research licensing process for the NWT from those in most parts of the Canadian provinces is the inclusion of the opportunity for feedback by community organizations. Communicating with communities is a vital part of the research licensing procedure. A research license will not be issued if appropriate communication with the community has not taken place.”

In light of these clear statements that an application for a research licence is not intended to be a confidential process, I am not satisfied that there was any expectation of confidence implied in the submission of the application for a research licence.

Section 24(1)(b)(i) does not, therefore, apply.

Section 24(1)(c)(ii)

This subsection prohibits public bodies from disclosing to an applicant

information the disclosure of which could reasonably be expected to
(ii) prejudice the competitive position of a third party,

The third party, in its submissions to the Department of Health and Social Services, argued that the disclosure of the records will

compromise the quality of the data, the results of the data, and study outputs including publications to study funders and government decision-makers in Canada and internationally. Moreover, a compromised study will also prevent the research team from publishing these data as abstracts and manuscripts submitted to national and international academic conferences and academic peer-reviewed journals. Additionally [the researchers] are academic researchers who rely on academic freedom and competitiveness for career progression and the ability to attract research funding. [The Ontario government agency] relies on the ability to attract researchers and research funding in order to accomplish this mandate. The disclosure of the information would harm both the researchers and [the Ontario government agency].

The criteria for an exception pursuant to section 24(1)(c) are that the disclosure of the information must:

- a) be “reasonably expected to”
- b) prejudice
- c) the competitive position
- d) of a third party

The third party asserts that disclosure of the records would compromise the quality of the data, the results of the data and the study outputs. They provide this as a statement of fact but have provided no background from which I can reach that conclusion. No information was provided with respect to funding or how the funding for the project might be affected by the disclosure of the details of the study or how the outcome of the study might be affected by disclosure of the documents submitted in support of its application for a research licence. I am prepared to accept, as a general statement, that information with respect to methodologies and the hypotheses being tested might be adversely affected if disclosed publicly. This does not, however, lead to the conclusion that the disclosure of everything in the pages withheld could be “reasonably expected to prejudice the competitive position of the third party”.

Section 5(2) of the *Access to Information and Protection of Privacy Act* provides that the right of access to a record does not extend to information excepted from disclosure under Division B of Part 1 of the Act. However, where excepted information can be reasonably severed from a record, an applicant has a right to the remainder of the record. As a result, each record must be assessed line by line and, in some cases word by word. It is not appropriate to fully withhold a record simply because part of it is exempt from disclosure. The public body in this case clearly did not do a line by line review. It is, therefore, left to me to do so. I have numbered the pages sequentially, starting with the records which were partially disclosed, and for ease of reference have provided a description of each record and the number of pages in the record.

Record #1 - Proposal for Multiyear Research (8 pages)

The first page of this record (page 6 in the package of materials) appears to be a cover

letter from the Aurora Research Institute to the Department of Health and Social Services advising the department that an application for a research licence had been received and includes the name and address of the researcher, the general subject matter of the proposed study and the proposed duration of the study. Based on the submissions of the Department and the Ontario public institute, there is nothing in this page that could be reasonably expected to prejudice the competitive position of the Ontario public agency or the researcher if disclosed. I **recommend** that this page be disclosed.

The next page (page 7) contains similar baseline information about the nature of the research, the names and contact information for the researchers, the dates of the research project, the location and Funding information. Again, with the possible exception of the information under the heading "Location", I find that there is nothing in this page which, if disclosed, could be reasonably expected to prejudice the competitive position of the Ontario public agency or the researcher. It does not reveal methodology or any specific details about the study. Information about the location of the research is the sole exception as this might, at a stretch, be considered to be part of the methodology. I **recommend** that this page be disclosed with the exception of the information under the heading "Location".

Page 8 contains the heading "Project Description" and there are a number of sub-headings including "Objectives", "Rationale" and "Methodology". The paragraph under the heading "Objectives" merely outlines the purpose of the study which appears to be publicly available information (the Applicant referred to the purpose of the study in his Request for Information and it is referred to in a number of the emails which were disclosed to the Applicant). The three paragraphs under the heading "Rationale" seem to be a recitation of publicly available facts. There is nothing in these three paragraphs from which I can conclude that their disclosure could be reasonably expected to be prejudicial to the competitive position of the Ontario public agency or the researcher. I **recommend** that the content under the headings "Objectives" and "Rationale" be disclosed.

The balance of the information on page 8 to the middle of page 10 is a description of the methodology intended for the study. I am willing to accept that this is proprietary information, the disclosure of which might be reasonably expected to affect the outcome of the study if disclosed during the course of the research.

Under the heading "Travel Arrangements" on page 10 is information which, again, I am prepared to accept is part of the methodology which, if disclosed might reasonably be expected to prejudice the outcome of the research.

The next large heading on page 10 is "Community". For the most part the information under this heading is not about methodology but is about how the researchers will ensure that the people of the Northwest Territories will benefit from the research. I find that none of the information under this heading on page 10 could be reasonably expected to prejudice the competitive position of the researchers or the Ontario government agency. I **recommend** that these paragraphs be disclosed. This section of the record is continued in two paragraphs at the top of page 11. These two paragraphs, however, make reference to methodology and I accept that they qualify for an exemption pursuant to section 24(1)(c).

The next heading (page 11) is "Ethics". There are four questions under this heading as follows:

- Will you be interviewing or surveying NWT residents?
- What organization conducted (or will be conducting) the Ethics review for this research?
- How will you maintain participant confidentiality in your research?
- How will the data be stored over the short and long term?

With the exception of the answer to the second of these questions, I am satisfied that the responses to these questions relate to methodology and for that reason that disclosure of the information meets the criteria for an exception pursuant to section 24(1)(c). There is nothing in the answer to the second question which, in my opinion,

might prejudice the outcome of the research if disclosed and I **recommend** that the answer to this question be disclosed.

The last heading on page 11 (continued on page 12) is "Potential Impacts of the Research". I am satisfied that the information under this heading, if disclosed, could be reasonably expected to prejudice the outcome of the research.

Page 12 contains 2 more headings - "Emergency Information" and "Distribution". The latter indicates the entities who received a copy of the application for the research licence. I see nothing under these two headings which could be reasonably expected to prejudice the competitive position of the researchers. I **recommend** that the information under these two headings be disclosed.

Page 13 of this record does not appear to have any information specific to the research project and its disclosure could in no way prejudice the competitive position of the researchers or the Ontario public body. I **recommend** that this page be disclosed.

Record #2 - Letter from Ontario public body to study participant (2 pages)

This appears to be a copy of the letter that will be given to study participants and, as such, it gives insight into the methodology being used. I am satisfied that these pages have been appropriately redacted pursuant to section 24(1)(c)(ii).

Record #3 - Consent Form (1 page)

This is a blank form of the consent that the researchers will be seeking from study participants. While some of the information in the form may reveal methodology, not all of it does. The following parts of the record may reveal methodology and therefore meet the criteria for an exception under section 24(1)(c)(ii):

- a) the two bulleted paragraphs at the top of the page
- b) the last line on the page

I **recommend** that the balance of this page be disclosed

Record #4 - Survey questions (20 pages)

With the exception of the first page of this record (page 17 of the package) and the graphic on the last page (page 36 of the package), I am satisfied that these pages reveal methodology and specifics of the study which, if disclosed, would be reasonably likely to result in prejudice to the outcome of the study. I **recommend** that the first page of this record be disclosed along with the graphic on the last page.

Record #5 - Ethics Review Board Application Form (24 pages)

This record appears to be the form submitted by the researchers to the Ethics Review Board in Ontario. The first two pages and the top half of the third page of this record (page 37, 38 and top of 39 of the package) contain only baseline information already in the public realm. I **recommend** that these pages be disclosed.

I am satisfied that the information contained under the heading "Project Description" from the middle of the third page to the end of the ninth page consists of a detailed description of the methodology which, if disclosed, may prejudice the outcome of the research project.

The information under the heading "Expertise" which begins at the bottom of the 9th page of the record (page 45 of the package) and continues to the top of the 11th page contains the personal information of the researchers which, if disclosed, would result in an unreasonable invasion of privacy. This information has, therefore, been properly withheld pursuant to section 23(1). The form, however, should be disclosed with personal information redacted and I so **recommend**.

The next heading is "Participant Selection and Recruitment" which goes from the top half of the eleventh page of the record to the top of the 14th page (pages 47 to 50 of the

package). Again, I am satisfied that the content of these pages is about methodology and that disclosure might be reasonably expected to prejudice the study or the outcome of the study and has been properly withheld.

The same holds true for the information under the headings:

- a) "Consent" - top of the 14th page of the record to approximately the middle of the sixteenth page (pages 50 to 52 of the package)
- b) Potential Benefits and Harms - middle of the 16th page to the middle of the 18th page (pages 52 to 54 of the package)
- c) Privacy, Confidentiality and Security of Data or Samples - lower half of the 18th page to the middle of the 20th page (pages 54 to 56 of the package)

The bottom of the 20th page of the record (page 56 of the package) has a section headed "Signatures". There is nothing in this section of the record which could possibly prejudice the study or the outcome of the study. I **recommend** that this part of the record be disclosed. This signature block appears again at page 60 of the package, but with signatures included. I **recommend** the disclosure of this portion of the record as well.

Pages 21 through 23 of the record (pages 57 - 59 of the package) is a list of references to a number of published papers on the subject matter of the study. I see nothing in relation to the disclosure of these references which would reasonably be expected to prejudice the outcome of the study in question or the research itself. I **recommend** that these pages be disclosed

Record #6 - Appendix A (4 pages)

There is nothing in these four pages which, in my opinion, might prejudice the study or the outcome of the study, and I **recommend** that these four pages be disclosed.

Record #7 - Appendix B (1 page)

This page contains a picture of a label in use in another country. There is nothing in this label which, if disclosed, could be reasonably expected to prejudice the outcome of the study or the results of the study. I **recommend** that this page be disclosed.

Record #8 - Appendix C (1 page)

This is a label which will be used as part of the research project. As such, it reveals methodology and Section 24(1)(c)(ii) applies.

Record #9 - Appendix D (3 pages)

These three pages constitute a recruitment survey for the research. This is part of the methodology of the research project and I am satisfied, therefore, that disclosure might be reasonably expected to prejudice the outcome of the research and that these pages have, therefore, been properly withheld.

Record #10 - Appendix E (4 pages)

This is a copy of a letter and consent form to be provided to the participants in the research study. I am satisfied that the second and third pages of this record (pages 71 and 72 of the package) contain information about methodology, the disclosure of which would be reasonably expected to prejudice the outcome of the study or the results of the study and they have, therefore, been appropriately withheld. The first and last pages of the record, however, contain no such information and I **recommend** that these pages be disclosed (pages 70 and 73 of the package).

Record #11 - Appendix F (1 page)

This is a blank consent form and there is nothing in this page that might affect the

outcome of the research. I **recommend** that it be disclosed.

Record #12 - Appendix G (16 pages)

This appears to be a copy of the Recruitment Survey intended for use in the study. I accept that, with the exception of the last page, the disclosure of this record would reveal methodology and could be reasonably expected to prejudice the outcome of the research. The last page, however, (page 90 of the package), contains nothing that might do so, and I **recommend** that this page be disclosed.

Record #13 - Appendix H (2 pages)

This is a blank tracking form to keep track of the participants (name, date and a third column). The only part of this record which might reveal anything about methodology is the heading of the third column. I **recommend** that this page be disclosed with the exception of the heading over the third column and the title of the form.

Record #14 - Appendix I (1 page)

This is a copy of the "email invitation" that the researchers planned to use during the survey. As it reveals some of the methodology, I am satisfied that it has been properly withheld pursuant to section 24(1)(c)(ii).

Record #15 - Appendix J and Appendix K (1 page)

This record contains scripts for reminders to participants. With the exception of the following items:

- a) last three words of line one and first two words of line two of Appendix J
- b) the name used in the first line of the first message under Appendix K
- c) the last five words of paragraph 2 of the first message under Appendix K

- d) the name used in the first line of the third message under Appendix K
- e) the last five words of paragraph 2 of the third message under Appendix K

there is nothing in the record which, if disclosed, would reveal any methodology or which could be reasonably expected to prejudice the outcome of the research. I **recommend** that this record be disclosed with the exception of the items outlined above.

Record #16 - Appendix L (2 pages)

This record contains another set of survey questions and I am satisfied that it meets the criteria for an exception to disclosure under section 24(1)(c)(ii).

Record #17 - Appendix M (2 pages)

This appears to be an introduction letter to participants. I am satisfied that it meets the criteria for an exception to disclosure under section 24(1)(c)(ii).

Record #18 - Appendix N (15 pages)

This record contains another set of survey questions and I am satisfied that it meets the criteria for an exception to disclosure under section 24(1)(c)(ii) with the exception of the graphic at the bottom of page 15 (page 113 of the package of materials). I **recommend** that the graphic be disclosed.

Record #19 - Appendix O (1 page)

This record contains the script for an email reminder to participants. I am satisfied that the second and third full paragraphs (after the greeting) contain information about the research and the methodology which, if disclosed might be expected to prejudice the outcome of the study or the results of the research and these two paragraphs meet the

criteria for an exception pursuant to section 24(1)(c)(ii). I **recommend** that the balance of this record be disclosed.

Record #20 - Appendix P (1 page)

This is a sample of a tracking form to be used in the study. It contains fictitious information about participants. I see nothing in this record that would, if disclosed, be reasonably expected to prejudice the research or its outcome. I **recommend** that this record be disclosed.

Record #21 (1 page)

This is a letter to the researcher indicating that the project had received ERB Approval. There is nothing in this record which, if disclosed, would be reasonably expected to prejudice the research or the outcome of the research. I **recommend** that this record be disclosed.

Record #22 (3 pages)

This record is an application for a research licence in another jurisdiction. On the first page of the record (page 117 of the package) there is nothing which would, in my opinion, result in any prejudice to the research or its outcome. I **recommend** that this page be disclosed.

The second page of this record contains some information about methodology, particularly under the title “c) Location areas of study”. I am satisfied that the two lines under this heading were properly withheld. I **recommend**, however, that the balance of the page be disclosed.

The answers to questions 2 and 3 at the top of the third page of this record might reveal methodology which might, in turn result in prejudice to the results of the study. The

questions themselves, however, and the information on the remainder of this page do not fit the criteria. I therefore **recommend** that the page be disclosed with the exception of the answers to questions 2 and 3.

Section 24(1)(c)(iv)

The third party agency in Ontario argues that section 24(1)(c)(iv) also applies. This section provides that a public body is prohibited from disclosing information the disclosure of which could be reasonably expected to result in similar information not being supplied by the third party in the future. I see little merit in this argument. As noted above, this is not information that was requested by the GNWT. It was information that was freely provided by the third party for the purpose of obtaining a licence they required to conduct research they were interested in and for which the Northwest Territories presented a convenient forum. This is not information that the GNWT sought or information that the GNWT agreed either explicitly or implicitly to keep confidential. Because the third party is a provincial government agency doing research that it clearly wants to ensure has value to the people of Ontario, it is unlikely to attempt to conduct research in the NWT without appropriate licences, even if it knows that information in the application might be subject to public review. I am not at all convinced that the disclosure of any of the information in question would, if disclosed, be “reasonably expected to” prevent the third party from providing similar information in the future.

CONCLUSION

I find that section 16(1)(a), section 24(1)(b)(i) and section 24(1)(c)(iv) do not apply to protect the information contained in any of the records identified as responsive to the Request for Information. I further find that section 24(1)(c)(ii) has been properly applied to some of the information in pages 6 through 119 of the package of records. My specific recommendations are set out in the discussion above. As noted in my introductory comments on the discussion of section 24, if the department intends to accept my recommendations, the third parties should be notified in accordance with

sections 27(2) and (3) of the *Access to Information and Protection of Privacy Act* and advised that they may seek a review from this office if they disagree with the decision made.

Elaine Keenan Bengts
Information and Privacy Commissioner