

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER**
Review Report 99-13

August 28, 1999
Review File: PC9161

BACKGROUND

On July 2nd, 1998, the Applicant applied under the *Access to Information and Protection of Privacy Act* (the "Act") to the President of the Northwest Territories Development Corporation for information with respect to debts which had been written off by the Development Corporation in the spring of 1998. The request was apparently forwarded to the Department of Resources, Wildlife and Economic Development (RWED) for a reply. On August 20th, 1998, the Applicant was sent a letter advising him that the information he requested was governed by section 13(1) of the Act and could not be released except with the approval of the Executive Council Secretariat or the Financial Management Board Secretariat. The Applicant requested a review of that decision by a request to the ATIPP Commissioner's office received on May 3rd, 1999.

Submissions were requested and received from both the Applicant and RWED on the matter. Copies of the documentation in question were provided to the Information and Privacy Commissioner for the purposes of assisting her in considering the arguments raised.

FACTS

The information requested related to five companies, namely Marathon Waterworks Ltd., NCSTV Ltd., Barsoum Drugs, KMW Ventures and Kakivak Fisher Foods Ltd., all of which were named in a document tabled in the Legislative Assembly in the spring of 1998. To date, because of the position being taken by RWED that the information

requested cannot be released, none of these companies have been given notice as third parties as required by the Act if there is an intention to release third party information.

In the spring of 1998, a bill was passed in the Legislative Assembly approving the "write-off" of certain loans which had been made through government programs. Each of the companies named above was named in the bill as a creditor whose debt was to be written off. The request was made for "background papers regarding the write off of the following debts owed to the Northwest Territories Development Corporation" by each of the five companies. The request sought a detailed history of the Corporation's collection efforts in each case and detailed reasons for non-compliance provided by the defaulting companies. The request also sought copies of the original loan applications or the proposals which resulted in the loans made to each company and the names of the officers of each company at the time the loan was made.

The applicant was advised that two of the companies, Barsoum Drugs and KMW Ventures did not receive any funding from the Northwest Territories Development Corporation. However, it is clear from the documentation which I have reviewed that each of these companies did have bad debts owing to the Government and that those debts were written off. The nature of the request for information does not appear to focus on the source of the government funding but on the reasons the debts were written off. To the extent, therefore, that information is available to the applicant, this recommendation will apply to the information available for all five companies.

ISSUES

In its original letter to the applicant denying access to the information, RWED relied on and claimed that the documents in questions were protected from disclosure pursuant to section 13 of the *Access to Information and Protection of Privacy Act* (ATIPP) which reads as follows:

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;.....

However, when submissions were made to this office, reliance was placed on section 24(1)(b)(i) of the Act, which reads as follows:

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

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

The documents which I have been provided with include 16 pages of what appear to be a summary of the details and history for the loans made to each of the named companies. Some of the information requested (for instance, the original application forms) were not provided to me.

It is to be noted that the onus in this instance is on the public body to show why these documents are not subject to disclosure.

DISCUSSION

Section 13

A couple of things should be noted about this exemption. Firstly, it is mandatory. If a document is, in fact, a confidence of the Executive Council, the public body **shall** refuse to disclose it. Secondly, in order to qualify for this exemption, the document must have been prepared for presentation to the Executive Council or the Financial

Management Board.

Although the public body relies on this section of the Act, it has provided me with no indication as to how or why these documents were prepared, or in what context. One must, therefore, look at the circumstances surrounding the information in question. If I were to take a guess, I would say by my review of the summaries provided and in the context of the bill presented to the Legislative Assembly, that they were prepared for the purpose of providing the Members of the Legislative Assembly as a whole with the background they needed to consider the piece of legislation before them. There is nothing to suggest that the documents were prepared only for Cabinet or the Financial Management Board. Nor is there any suggestion that the files from which the summaries were compiled were prepared for and available only to the Cabinet.

Without more, I cannot conclude that the documents identified as being responsive to the request, or the "source" documents (which I suggest must be included in the list of documentation which is responsive to this request for information) are subject to the protection of section 13 of the Act.

Section 24(1)(b)(i)

The other ground upon which the public body relies to deny the Applicant access to the information requested is that it is financial information obtained in confidence, explicitly or implicitly, from a third party. The information requested is, to some degree, information about a third party. It is not, however, all financial information, nor is it information which appears to have been received from the third party in confidence. It is, for the most part, information which appears to have been gathered from the files of the financial institution which lent the money. Little, if any of it, appears to be information which could only have been obtained from the third party itself. Much of the information is already a matter of public record. For instance, the names of the companies involved are already public by virtue of the bill that was presented to the Legislative Assembly. The names of the directors and officers of the

companies at the time that the loans were made is information which is also publicly available through the Companies' Registry of the Northwest Territories. The fact that loans were made to the companies and the amount of the loans are also already in the public domain. Very little of the rest of the information which I have been provided with is information that can be said to have been "obtained" from the third party. As noted above, it is my opinion that the public body has failed to identify all documents responsive to his request. The "source" documents from which the summaries were compiled, are also responsive. It does not appear that these have yet been reviewed for the purpose of disclosure under this Request for Information. It may be that some of the information in these "source" documents is financial information provided by the third party which was intended to be confidential. There is nothing before me, however, to confirm that.

There is nothing in either the content or the nature of the summaries which leads me to believe that any of the information in the summaries was information obtained from the third party, let alone that it was intended to be confidential.

RECOMMENDATION

Based on the above analysis, it is my recommendation that:

- a) the 16 pages of summarized information which has been identified by the public body as being responsive to the request for information should be released to the Applicant. Before the information is released, the third parties should be given notice of the public body's intention to release the information in accordance with the ATIPP Act. To the extent that the third parties no longer exist or cannot be located, notice should be given to the last known directors at the addresses provided for them in the records of the Companies Registry or in the records of the public body which lent the funds to the third party.

- b) further review should be conducted of the source information and all responsive documents should be identified, reviewed and, to the extent contemplated by the Act, provided to the Applicant. If there are items which are subject to exemptions from disclosure, those items should be listed for the Applicant and an explanation provided as to the specific reasons that the information is being withheld. Notice will have to be given to the third parties as contemplated by the ATIPP Act.

- c) Because it has already been one year since the Request for Information was made, it is not unreasonable for a deadline to be put on this recommendation and I recommend that the files be reviewed and all further documentation which is responsive to the Applicant's request be provided to him within 60 days of the date that this recommendation is accepted by the Minister, keeping in mind that the third parties will have 30 days within which to object to the release of the information in question insofar as it relates to each third party.

Elaine Keenan Bengts
Information and Privacy Commissioner