NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 14-126
14-126-4
April 7, 2014

BACKGROUND

The Applicant in question was a contract employee with one of the Health Authorities in the Northwest Territories. There were issues raised by co-workers about the employee, which eventually resulted in consequences to the employee which affected his ability to continue to work within the Health Authority. On November 1st of 2013, the Applicant made a Request for Information from the Department of Health and Social Services, requesting information about the issues surrounding the end of his employment. The initial request was sent to the ATIPP Co-Ordinator for the Department. The Department passed the information to the appropriate Health Authority to be dealt with, presumably pursuant to section 12 of the *Access to Information and Protection of Privacy Act*. The Health Authority says it did not receive the Request for Information until November 29th, though no explanation for the delay has been provided. On December 19th, the Applicant received a telephone call from the Authority asking if it he would consent to wait until January for his response. On January 14th, 2014, he received an email from the Health Authority asking if it would be okay if the response was delayed until February. The Applicant did not respond to that email. No formal extension of time was taken pursuant to section 11 of the Act. By January 24th, 2014, the Applicant had still not received a response to his Request for Information and asked that I review the "deemed refusal" to disclose the requested records.

As a result of the Applicant's request, I wrote to the Health Authority on January 31st, advising them that, because they had not responded to the Applicant's request within 30 days as required by Section 8 of the Act, nor had they extended the time for response pursuant to Section 11, I was treating the matter as one of a "deemed refusal" to disclose any responsive records as per Section 8(2). I asked the public body to provide me with copies of all responsive records, both in the form that they "would have"

disclosed them to the Applicant and in their original format. I also asked the Authority to provide me with a detailed explanation for any exemptions that they thought might apply to any of the records or any sections of the records. A response was requested by March 1st.

On March 1st, I received the Authority's submissions and copies of all of the records identified as being responsive to the Applicant's request. One set of the records included those edits which would have been made, had the records been disclosed, as well as a statement indicating which section of the Act they felt applied to each of the proposed edits. The accompanying letter included an explanation for the delay in responding as well as suggesting that certain parts of the records would have been withheld pursuant to sections 14 and 23 of the Act. No further explanation with respect to the proposed exemptions was provided.

On March 4th, I wrote to the public body asking that they confirm whether or not they had, in fact, now disclosed the records to the Applicant. I also invited them to provide me with a more detailed explanation of the exemptions claimed and how they applied to each of the deletions claimed. I asked for their response by March 21st.

As of today's date, I have received nothing further from the public body.

THE ISSUES

There are several issues arising out of this Request for Review:

1. Why did it take so long for the Applicant's Request for Information to get from the Department of Health to the Health Authority and was the Applicant advised of the transfer in accordance with Section 12?

2. Did the public body take the proper steps to effect an extension of the time for responding to the application, and did the extension of time fall within the requirements of Section 11?

3. Does a failure to respond to a request for information within 30 days, or failure to respond until a Request for Review has been made to the Information and Privacy Commissioner, preclude a public body from belatedly disclosing responsive records to the Applicant?

4. Assuming that the public body were to have provided the records in question to the Applicant, were the exemptions claimed properly claimed either pursuant to section 14 or 23 of the Act, or any other provision in the Act?

DISCUSSION

1. Why did it take so long for the Applicant's Request for Information to get from the Department of Health to the Health Authority and was the Applicant advised of the transfer in accordance with Section 12?

Section 12 of the Act provides as follows:

> (1) The head of a public body may transfer a request for access to a record and, if necessary, the record, to another public body where
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> (a) the record was produced by or for the other public body;
>
> (b) the other public body was the first to obtain the record; or
>
> (c) the record is in the custody or under the control of the other public body.
>
> (2) Where a request is transferred to another public body,
>
> (a) the head of the public body who transferred the request shall notify the applicant of the transfer without delay; and
>
> (b) the head of the public body to which the request is transferred shall respond to the applicant in accordance with section 9 not later than 30 days after the request is received by that public body unless this time limit is extended under section 11.

It is also important to note that all public bodies are required to act “without delay” which means if they can respond earlier than 30 days after receiving a Request for Information, they have a legislated duty to do so. Section 7 provides that:

> 7.(1) The head of a public body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.

In this case, it is fairly clear that there was good reason for the Department of Health and Social Services to transfer the Request for Information to the Health Authority to respond to. It would have been clear from the outset that the records being requested were not in the possession or control of the Department of Health and Social Services but would have been held by the Health Authority for whom the Applicant worked. I have not been provided with any of the paperwork with respect to the transfer of the request, but it seems to me that it should have taken no more than a day or two for the Department to recognize that the request was outside their purview and to identify the appropriate public body to respond. Instead, it appears that it took very nearly a full month, creating the first significant delay in responding to the Applicant. I do not know whether or not the Applicant was advised of the transfer, either by the Department or by the Health Authority. The Applicant says that he received confirmation that the Health Authority had received the request, but does not advise how or when that confirmation was made, or who gave him that confirmation.

The time limits imposed in various sections of the Act are there for a reason - to provide structure and to ensure timely responses. The adage “justice delayed is justice denied” is equally applicable to access to public records. In this case, the Applicant’s employment was being affected by actions taken in his workplace and he needed a timely response to his request for information to be in a position to take steps to deal with issues raised so as to protect his ability to continue to earn a living. The delay in transferring the request resulted in at least a thirty day delay and I have been given no good reason for that delay.

2. Did the public body take the proper steps to effect an extension of the time for responding to the application, and did the extension of time fall within the requirements of Section 11?

Section 12 provides that a public body to whom a Request for Information has been transferred has 30 days from the date of the receipt of that Request to respond to it, unless the time for responding is extended pursuant to section 11 of the Act. The Health Authority in this case says they received the Applicant's Request for Information on November 29th. The response should, therefore, have been provided to the Applicant before the end of December. Instead, the Applicant received a telephone call in mid December and an email in mid January asking his permission to delay the response. The process for an extension, however, does not involve the consent of the Applicant. Section 11 provides that:

> 11. (1) The head of a public body may extend the time for responding to a request for a reasonable period where
>
> (a) the applicant does not give enough detail to enable the public body to identify a requested record;
>
> (b) a large number of records is requested or must be searched to identify the requested record and meeting the time limit would unreasonably interfere with the operations of the public body;
>
> (c) more time is needed to consult with a third party or another public body before the head can decide whether or not the applicant is entitled under this Act to access to a requested record; or
>
> (d) a third party asks for a review under subsection 28(2).
>
> (2) Where the time for responding to a request is extended under subsection (1), the head of the public body must tell the applicant without delay
>
> (a) the reason for the extension;

(b) when a response can be expected; and

(c) that the applicant may ask for a review of the extension under subsection 28(1).

I have been given no reason to believe that subsections 11(1)(a), (c) or (d) apply in this case. Nor, in my opinion, can it be said that there were a large number of records involved (in the end, the public body identified just over 300 pages of responsive records.) I have no idea whether there were a large number of records to search, or whether, for some reason, the search and retrieval process would have been such that it would "unreasonably interfere with the operations of the public body". I know none of these things because the public body failed to comply with the requirements of Section 11 of the Act and chose, instead of following the requirements of the Act, to seek consent to a delayed response from the Applicant personally. In their submissions to me, their explanation for the delayed response was as follows:

> Due to our administrative error along with the changes in personnel there was a miscommunication in relation to the timelines for a response to this request.

And further

> The Authority had been in contact with the applicant in order to indicate the delays associated with this particular request and had continued to process the request. A changeover in Coordinator resulted in a miscommunication about the timelines associated with this request.

These statements explain the delay, but do not fit the public body within any of the acceptable reasons for a delayed response pursuant to section 11.

While the Applicant acknowledges that he conceded (not willingly, but conceded) to the initial request for extension made in December, he did not respond in any way to the email in January. While the Act does not require a that an extension notice be in writing,

the best practice would be to provide a written notice in accordance with the Act so that when issues arise later, as they did here, the public body can point to the written notice and show that they took the proper steps to extend the time. In this case, I am not convinced that there was a valid reason for an extension, nor am I convinced that the public body gave the appropriate notice of the extension to the Applicant.

3. Does a failure to respond to a request for information within 30 days, or failure to respond until a Request for Review has been made to the Information and Privacy Commissioner, preclude a public body from belatedly disclosing responsive records to the Applicant?

For some reason, notwithstanding the fact that the Health Authority in this case identified all the responsive records and was able to provide me with edited and non-edited copies, they did not provide the Applicant with a response to his request even, it appears, after I encouraged them to do so. Once again, I would refer to section 7 of the Act which places a positive obligation on public bodies to respond "openly, accurately, completely and without delay". Deadlines are going to be missed. It's going to happen. But missing a deadline does not mean it's done and the public body can simply treat the matter as completed. More urgency, not less, should be the name of the game when a public body is unable to meet a deadline under the Act, particularly where this office has encouraged the public body to respond to the request, notwithstanding the delay.

4. Assuming that the public body were to have provided the records in question to the Applicant, are the proposed exemptions properly claimed either pursuant to section 14 or 23 of the Act, or any other provision in the Act?

I have had the opportunity to review all of the records identified by the public body as being responsive to the Applicant's Request for Information. The Health Authority has provided me with "edited" copies showing what they would intend to disclose if and when they do respond to the Applicant. They suggest that most of the records require some edits and they rely almost exclusively on either section 14(1)(a) or section 23(2)(a) as justification for not disclosing portions of the records. As noted above, I

asked for the public body to provide a more detailed explanation for these proposed exemptions but the Health Authority did not respond.

Section 14

Section 14(1)(a) of the Act allows for a discretionary exemption from disclosure to protect advice, recommendations, proposals or policy options being developed within or for a public body:

> 14. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to reveal
>
> (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council;

The first thing to note about this exemption is that it is discretionary. Keeping in mind that disclosure is the rule, and that exemptions should be narrowly interpreted and applied, this means that even where section 14 applies to a record, the default position should always be for disclosure and public bodies should withhold records only when there is a very good, considered and articulated reason for them to do so. They must actively exercise their discretion and demonstrate that they have done so.

I note, as well, that section 33(1) requires public bodies denying access to a record or part of a record, to establish that the exemption applies:

> 33.(1) On a review of a decision to refuse an applicant access to all or part of a record, the onus is on the head of the public body to establish that the applicant has no right of access to the record or part.

This means that the public body must be able to justify the refusal to disclose. Simply referring to a discretionary section of the Act is insufficient. At the very least there has to be some indication that the public body has exercised it's discretion.

In this case, I have nothing from the public body except a reference to section 14(1)(a). In previous recommendations, I have considered and accepted the view of the Office of the Alberta Information and Privacy Commissioner in their interpretation of the equivalent section of their Act (section 24). In Order 96-006, Alberta's Information and Privacy Commissioner set out the criteria for "advice" (which includes advice, proposals, analyses and policy options) under their equivalent to our section 14(1)(a). The order determined that the "advice" should be:

1) sought or expected, or part of the responsibility of a person by virtue of that person's position,
2) directed toward taking an action, and
3) made to someone who can take or implement the action.

I see that some, but certainly not all, of the records which have been identified as being subject to section 14(1)(a) include an element of advice or consultation between a number of individuals. There is, however, no way for me to identify the individuals involved, whether they are employees of the public body or outside agents, whether the giving of the advice is part of the responsibility of any of those involved in the discussions or whether any of those involved are in a position to implement an action. In short, the public body has not met the onus of establishing that section 14(1)(a) applies, let alone demonstrated that they have actively exercised their discretion in relation to the items to be withheld.

Keeping in mind that the rule is always disclosure unless an exemption has been properly applied, I recommend the disclosure of the following pages (as numbered by the public body) in full:

Pages 1 through 9

Pages 14 through 68

Pages 75 through 78

Page 79 but for the first sentence of the last paragraph of the body of the email (see discussion regarding section 23(2)(a))

Pages 80 through 87

Pages 91 through 95

Page 110 but for the number on line 2

Pages 125 through 132

Pages 164 through 166

Pages 191 through 195 but for lines 7 and 8 on page 192 (see discussion regarding section 23(2)(a))

Pages 201 through 215 but for the last paragraph of the body of the email on page 210 (see discussion regarding section 23(2)(a))

Pages 222 through 249

Pages 293 through 297 but for lines 8 and 9 on page 294 (see discussion regarding section 23(2)(a))

Section 23

The Health Authority has also referred me to section 23(2)(a) of the Act. Section 23(1) prohibits public bodies from disclosing personal information to an Applicant where the disclosure would constitute an unreasonable invasion of a third party's privacy. Section 23(2) through s. 23(4) provide a set of guidelines for determining when the disclosure of personal information about a third party will constitute an unreasonable invasion of that party's privacy. In particular, s. 23(2) sets out circumstances in which there is a presumption that the disclosure would constitute an unreasonable invasion of privacy:

> 23.(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

Again, I have been provided with no explanation or submissions on how this section applies to the various sections of the responsive records to which the public body has applied them (or would have applied them, had they responded to the Applicant's request for information). This exemption, however, must be addressed somewhat differently than section 14 because it is a mandatory exception. If the disclosure of a record, or part of a record, would constitute an unreasonable invasion of a third party's privacy, it must not be disclosed. So, while the onus is still on the public body to establish that the exemption applies, if they do not do so, I must also do my own assessment, as best I can without the details I would expect from the public body, based on the content of the records and my analysis of the context.

In the circumstances, therefore, I must address each such proposed deletion individually.

Page 79 (last paragraph of the body of the email, beginning with "FYI").
There is nothing in the last sentence of this paragraph that constitutes any person's personal information and it should be disclosed. The first sentence, however, does constitute the personal information of a third party and 23(2)(a) would apply, such that its disclosure would constitute an unreasonable invasion of the third party's privacy, and I recommend that it NOT be disclosed.

Pages 88 and 89
While the public body has not claimed section 23 applies to anything on these two pages, they propose to withhold significant portions of these two pages on the basis that the information outlined is "not related to the request". As I have said previously, once a record has been identified as having responsive material, the whole of the record must

be disclosed, subject only to any applicable exemptions. In Review Recommendation 11-097, I made the following comments:

> Firstly, a record is either responsive or it is not. One of the cautions about using e-mail as the main mode of communications is that ALL e-mails in a chain become part of "the record". The record cannot be chopped up into little bits, some of which is "responsive" to the request and some of which is not. The whole e-mail chain is "the record". This record, therefore, contains 9 pages and because part of it is "responsive" to the request for information, the entire record is responsive. The only reason that parts of the record might be cloaked is if those sections fall within one of the limited exemptions provided for in the Act. They cannot be severed simply because they appear to be "off topic".

Keeping this in mind, that portion of the first page of this two page record does not appear to contain any personal information about any third parties, though a name does appear at the end of the proposed deleted portion. I would recommend the disclosure of this entire page, with only the name edited, out of an abundance of caution. The second page of this record also has a large section which has been edited. The information in this edited section appears to me to be related to the work of the public body. There are several names that appear in this section and those names, again, out of an abundance of caution, should be edited but the rest of the record should be disclosed.

<u>Pages 100 to 104</u>

These, once again, are hand written notes which appear to have been made by someone within the workplace. Again, most of these four pages have been edited with the notation "not related to the request".

In my opinion, once again out of an abundance of caution, all reference to the names of individuals on page 100 should be edited, but once those names are removed, the balance of the page should be disclosed.

The top section of page 101 appears to be notes about a third party's medical issues and/or employment history (section 23(2)(d)) or discloses other the name of a third party with other information about the third party (section 23(2)(h)). I am satisfied that the disclosure of first eight lines, plus the name at the top of page 101 would constitute an unreasonable invasion of that person's privacy and should NOT be disclosed. In addition, on this page, there are other individuals named and these names should be edited. The balance of the page should be disclosed.

On page 102, provided the names of the individuals on the page are deleted, there is nothing on this page that should not be disclosed.

On page 103, there are individual names which appear in various places. If the names are removed, there is nothing preventing the disclosure of the remainder of the page. The public body specifically refers to section 23(2)(i) as an exemption in one section of this page. Section 23(2)(i) provides that there is a presumption that the disclosure of personal information will constitute an unreasonable invasion of that person's privacy when "the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation." If one removes the names from this section of the record, however, I am satisfied that there would be no unreasonable invasion of privacy.

Page 104, once again contains reference to a number of named individuals. Most of the notations appear to be about duties assigned to the individuals within the workplace. Section 23(4)(e) provides, in part, that there is NO unreasonable invasion of a third party's privacy where that information relates to an individual's responsibilities as an employee of a public body. As a result, I am not convinced that the disclosure of these names would constitute an unreasonable invasion of their privacy. However, there is a telephone number attached to two of the names and reference to the dates of one individual's "next contract". Again, therefore, simply out of an abundance of caution, I recommend the removal of the names and the telephone numbers and the disclosure of the balance of the page.

Page 105

The public body suggests that there are two portions of this record that should be edited pursuant to section 23(2)(a) of the act. The first such deletion refers to a patient by reference to an ailment (not by name). The ailment is not one I would think would be uncommon. As such, this reference would likely identify the person being referred to to a limited group of readers (i.e. - those who worked in the particular clinic and who had a history with this particular patient). I am not convinced that anyone else could identify the individual from this description of the patient. Nor does the reference make any comment about the individual such as to reveal anything at all about him and the disclosure would not constitute an unreasonable invasion of the patient's privacy. I would, therefore, recommend the disclosure of the ailment. The second deletion from this email is a personal comment made by the writer of the email about herself. I am satisfied that the disclosure of these two lines would constitute an unreasonable invasion of the writer's personal privacy and agree that it would be properly withheld.

Pages 106 through 114

These, again, are handwritten and dated notes made by someone within the workplace and again, most of the 9 pages are marked as being "not related to the request". Once again, if any part of the record is responsive, the whole record must be disclosed, subject only to any applicable exemptions.

Page 106 - Most of this page relates to work assignments and, as noted, above, the disclosure of this information is not considered to be an unreasonable invasion of privacy. There is, however, reference to one individual and a reason for that person not being present at work. The disclosure of that one line would constitute an unreasonable invasion of that person's privacy and should be withheld. The balance of this page should be disclosed.

Page 107 - Again, most of this page relates to work assignments and should be disclosed with the following exceptions:

a) the phone number at the top of the page

b) the word after “Allison” at the end of the 7th line

c) the last four words of the notation starting at line 10

Page 108 - Again, most of this page appears to be working notes kept by a supervisor in the workplace and most of it is work related. I recommend the disclosure of this page with the following exceptions:

a) line 4

b) lines 9 and 10

c) the phone numbers at lines 13 and 14

Page 109 - This page, though marked as not related to the request, in fact appears to be directly related to the request. With the exception of the phone number at the end of the page, I recommend that this page be disclosed.

Page 110 - The first two lines at the top of this page marked as “not related to the request” should be disclosed, with the exception of what appears to be a telephone number after the name on the second line. The balance of this page is marked as being subject to section 14(1)(a) and should be treated as noted above.

Page 111 - There is nothing on this page that might constitute an unreasonable invasion of any person’s privacy and I recommend that it be fully disclosed.

Page 112 - The information on this page, with the exception of a notation on the side of the page, appears to be about a patient and an incident involving the patient. It is the personal information of a third party and would be properly excluded from the disclosure.

Page 113 - Everything on this page appears to be related to office administration and management of employees. There is no reason to withhold anything on this page but for the second word on line 5.

Page 114 - Lines 6 through 13 of this page relate to an issue involving a third party, and the disclosure of these lines would constitute an unreasonable invasion of that person's privacy. The balance of the page should be disclosed.

Pages 115 to 122

These pages appear to be a typewritten complaint written by one employee about one or more other employees (not the Applicant). The main focus of this 8 page record is a third party, but the Applicant is mentioned in one paragraph on page 2 of the record. I have reviewed the record and have provided the public body in this case with a copy of the record with those portions edited which I believe would constitute an unreasonable invasion of a third party's privacy. The balance of the record should be disclosed.

Pages 123 and 124

These are, again, hand written notes which contain information which is largely outside the scope of the request for information made but make some reference to the Applicant. On page 123, the name and telephone number at the top of the page should be edited. Information on the 5th and 6th line appear to be information about a third party's medical condition and should be edited as well. A notation to the right of these lines refer's to another individual, and that name should be deleted as well. Finally, there is reference to a patient by name and that name should be removed. At the bottom of the page, the public body has indicated that it would edit most of the last three lines on the basis of section 23(1)(a). I do not agree that there is any personal information about any identifiable third party in this section of the page, let alone any personal health information.

With the exception of those notations noted above, I recommend this page be disclosed.

Page 124 - Again, most of this record has been marked as being not related to the request. The top half of the page, in fact, does appear to be directly responsive to the Applicant's request. The second half of the page refers to an "incident" and there is reference to a patient and the patient's treatment. The portions of this section which would identify the patient or his treatment should be edited but the balance of the record

should be disclosed. Specifically on this page, I recommend that the entire record be disclosed except for:

a) the last two words on line 4
b) the name on the end of line 6
c) lines 10 through 12
d) everything after the word “chronic” on line 14
e) everything after the word “portfolio” on line 15
f) the second word on line 18
g) the names on lines 19 and 20
h) the words after “did” and before “on Sat” on line 21

Page 168

This page is completely outside the scope of the Applicant’s request for information and need not be disclosed.

Page 170

This record is one page in length and contains two emails. Most of the record has been marked as being “not related to the request”. Much of the first email on the page contains the personal information of the writer, the disclosure of which would be an unreasonable invasion of her privacy. I recommend the disclosure of the first three lines of paragraph of this email up to the word “fresh”. The balance of this paragraph and the next two paragraphs should not be disclosed as disclosure would constitute an unreasonable invasion of the writer’s privacy. The last two paragraphs of this email and all of the next email should be disclosed as well.

It appears that this record may not be complete as it appears to end in the middle of an email. If there are additional pages to this record, they should be disclosed, subject to any appropriate exemptions.

Page 171

Again, parts of this page have been marked as being “not related to the request”. There is nothing on these pages which would constitute the personal information of a third

party, the disclosure of which would be an unreasonable invasion of that person's privacy and I recommend that this page be disclosed in full.

Page 173

I note, as a preliminary matter, that it is clear that this is an incomplete record. It begins in the middle of an email and ends in the middle of another email in a chain. I recommend that the rest of this record be provided, subject of course to any exemptions that might properly apply.

With respect to that part of the record that has been provided, the first two paragraphs on the page, the one line body of the second email in the chain, and the three lines of the third email on the page have all been marked as "not related to this request". The first two paragraphs on the page and the second email on the page are the same emails as appear on page 170 and should be treated accordingly. I am satisfied that the disclosure of the last three lines on the page would constitute an unreasonable invasion of the writer's personal privacy and these lines would be properly deleted.

Page 174

This email has two deletions, both said to be pursuant to section 23(2)(a). This email is the same as appears on page 105 and should be treated in the same way.

Pages 175 and 176

These records do not seem to be in any way responsive to the Applicant's request for information and need not, therefore, be disclosed.

Page 177

Most of this email has been marked as being "not related to the request". In my opinion, most of the record should be disclosed, with the exception of:

a) the two names on the first line of the body of the email
b) that portion of the second line after the word "so" and before the word "because"

Pages 178 to 180

This record is a three page narrative, largely about the Applicant. Some of the information in the record has been identified as being subject to section 23(2)(a) such that its disclosure would be an unreasonable invasion of the privacy of one or more third parties. Those portions identified appear to be descriptions of the treatment of certain patients. None of the patients are mentioned by name, but in some cases, the description of the cases and the treatment would allow the patient to be fairly easily identified. Where that is the case, the information should, of course, not be disclosed. However, not all of the information identified as being subject to section 23(2)(a) in this record should be with held.

I recommend that this record be disclosed with the following exceptions:

On page 178 -

a) line 1, paragraph 4, the words after “who” and before the Applicant’s name in the second line;
b) line 2, paragraph 4, the words between “After an” and “was”;
c) line 3, paragraph 4, the words between “she” and “I asked” and the word between “your” and “is done”;
d) line 4, paragraph 4, the words between “need” and “in that” and the seven last words of the line;
e) line 5, paragraph 4, the first two words and the last two words of the line;
f) line 6, paragraph 4, the words before “When I” and the last four words of the line;
g) line 7, paragraph 4, the first word;
h) line 1, paragraph 5, the words between “baby” and “and is”;
i) line 3, paragraph 5;
j) line 4, paragraph 5, the first 7 words and the words between “and was” and “While”
k) line 5, paragraph 5, reference to the named medication;
l) line 6, paragraph 5, the first word;
m) line 7, paragraph 5, the words between “use to” and “I told” and reference to the named medication;

n) line 8, paragraph 5, the words between “tricks” and “babes”

o) line 9, paragraph 5, the words between “that the” and “babe”

On page 179

a) the last line of paragraph 2 after the words “was that”.

b) line 3, paragraph 6, the words between “seen” and “The” and the words between “patient’s” and “and”, and the last word of the line

c) line 4, paragraph 6, the first word and the words between “appt” and “So”;

Page 181

The “Subject” line of this email refers to a patient by name and that name would be properly deleted pursuant to section 23(2)(a). There is, however, nothing in the balance of this record that would result in an unreasonable invasion of privacy if disclosed and I recommend that the balance of the page be disclosed.

Page 182

The Health Authority has suggested that all but the last paragraph of this email is protected from disclosure pursuant to section 23(2)(a). In my opinion, only the last sentence of the first paragraph, the second paragraph and the last sentence of the fourth paragraph qualify for an exemption pursuant to section 23(2)(a). The rest of the record should be disclosed.

Pages 183 and 184

Again, most of this record has been identified as being “not related to the request”. This email chain relates almost exclusively to administration and management of the office and, as such, cannot be considered to be the personal information of the parties named. The one line at the top of page 184, however, is the personal information of the writer, the disclosure of which would constitute an unreasonable invasion of her privacy. I recommend that this record be disclosed in full with the exception of the line at the top of page 184.

Pages 185 and 186

Again, most of this record has been identified as being “not related to the request”. This email chain relates almost exclusively to administration and management of the office. There is no personal information in the record. These pages should be fully disclosed.

Page 187

Most of this record has been identified as being “not related to the request”. This email chain relates almost exclusively to administration and management of the office. There is no personal information in the record. The page should be disclosed.

Page 189

This email is included as part of the email chain on pages 183 and 184 and should be dealt with accordingly.

Page 190

Again, most of this record has been identified as being “not related to the request”. This email chain relates almost exclusively to administration and management of the office. There is no personal information in the record. Furthermore, these are emails which involve the Applicant either as a sender or recipient and there is no good reason, therefore, not to disclose them. The page should be disclosed.

Page 192

The email on this page is also included in the email chain discussed at page 79, and should be treated accordingly.

Pages 197 to 204

The content of these pages appears to be the same as in pages 115 to 122 and should be dealt with accordingly.

Pages 210 and 211

These pages appear to be duplicates of records discussed above and should be dealt with accordingly (page 79, page 192)

Pages 253 to 256

These four pages are made up of a lengthy email chain which deals with a number of topics, but which were all sent under the same subject heading. Most of the record has been identified as not being relevant to the request. It does contain some third party information, the disclosure of which would be an unreasonable invasion of the privacy of those individuals, but the rest of the record should be disclosed. In particular, the following parts of the record should not be disclosed:

On page 254:

a) line 3, paragraph 2, the first 7 words of the line and the last six words of the line
b) line 4, paragraph 2, the first six words of the line and the last word of the line;
c) line 5, paragraph 2, the words between “will be” and “Will see”;
d) line 1, paragraph 3, the words between “for” and “don’t”;
e) line 2, paragraph 3, the words between “denied” and “hopefully”

On page 255

a) line 3, paragraph 1 of the second email on the page, the first eight words;
b) line 4, paragraph 1 of the second email on the page, the words after “lifted” to the end of the line;
c) all of line 5, paragraph 1 of the second email on the page.

Pages 270 and 271

Again, this appears to be only a partial record which starts in the middle of an email. The entire record should be produced and disclosed, with appropriate edits in accordance with any applicable exemptions.

With respect to the portion of the email provided for my review, most of it has, once again, been noted as being “not relevant to the request”. There is some information in the record which would be subject to the mandatory section 23 exemption, but not all of

the record. In particular, I would recommend that the record be disclosed with the following edits:

a) line 1, the words after “does” and before “Will”;
b) line 2, the words after “she” and before “and I” and the two names toward the end of the line;
c) line 3, the name in the middle of the line
d) line 4, the two names;
e) line 5, the name of the individual (it appears twice in the line) and the name of the place;
f) line 7, the name at the beginning of the line;
g) line 8, the name at the end of the line;
h) line 9, the name of the individual (it appears twice in the line)
i) line 11, the name at the beginning of the line and the words between “on” and “correct?” and the name at the end of the line;
j) line 12, both names appearing on this line;
k) line 13, the name in the line (it appears twice) and everything after the word “but”
l) line 14, the name that appears in the line
m) line 16, the name and the community
n) line 17, the name and the community, as well as the words between “as a” and “in”
o) line 19, all the names that are in the line.

Page 275

Again, this record has been marked as not relevant to the Applicant’s request. That said, the Applicant’s name does appear in the email. There is nothing in the email that could be considered personal information and I recommend that this page be disclosed.

Page 276

The information in this page is the same as in page 185 and should be treated accordingly.

Page 277

This appears to be notes taken by an individual in the workplace. The entire note has been marked as being subject to section 23(2)(a). The only thing that might be considered to be medical information about an individual in the note is information about the Applicant. There are two sentences that begin at the end of line 9 and end at the end of line 10 which are the personal information of the writer and I am satisfied that the disclosure of these two sentences would be an unreasonable invasion of her privacy. These two sentences should be masked, but the balance of the note should be disclosed.

Pages 278 and 279

Most of this record has, once again, been marked as not relevant to the request. Once again, however, most of the record should be disclosed, except for:

a) in the email at the top of page 278,
   i) the name and community in the paragraph numbered 2
   ii) the names in the paragraph numbered 5
   iii) the names in the paragraph numbered 6

b) in the email at the bottom of page 278, continuing on page 279,
   i) the name and community in the paragraph numbered 2
   ii) the name in the first line of the paragraph numbered 3, as well as everything in the paragraph after the words “get him”
   iii) the name and community in the paragraph numbered 5 (the community name appears more than once)
   iv) the names in the paragraph numbered 6
   v) the names in the paragraph numbered 7, as well as the position number and the last word on line one of the paragraph;
   vi) the name and community in the paragraph numbered 8 (page 279)

Page 285

I am satisfied that the information suggested for deletion from this page were properly excluded from the disclosure.

Page 291 and 292

These two pages are, once again, hand written notes. A portion a the top of page 291 and another portion at the bottom of page 292 have, once again, been marked as being not relevant to the request.

With the exception of the names included at the paragraph numbered 3 on page 291, there is nothing in this page that would be exempt from disclosure pursuant to section 23(1)(a) of the Act and I recommend that the page be disclosed subject to these names being masked.

On page 292, two names appear on the first line of the 'deleted' section of the page. These two names should be masked, but the balance of the page should be disclosed.

Page 294

The content of this page has been dealt with above and this page should be treated accordingly.

Page 303

This is also a copy of handwritten notes and the top section of the page has been marked as being not responsive to the request. I would recommend the masking of all of the names, as well as the last four lines of the section. The balance of the page should be disclosed.

It should be noted that any records or pages not discussed above were part of the package of records that the public body intended to disclose without any edits. These pages should, of course, also be disclosed.

RECOMMENDATIONS

My specific recommendations are contained in the discussion above. In addition, on the issue of delay, I would recommend that every public body take steps to ensure that at least two individuals on staff have the necessary training and background to deal with

Access to Information Requests and/or Privacy Breach reports. In this way, in smaller organizations, if one person leaves, there is at least one other person on staff who has some background on ATIPP issues who can step in in a timely manner to ensure that the appropriate steps are taken and the legislated deadlines can still be met.

Elaine Keenan Bengts
Information and Privacy Commissioner