

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 09-080.1

File: 09-141-4

June 10, 2009

BACKGROUND

On June 10th, 2009, I issued recommendations with respect to this file. Those recommendations are set out in Review Recommendation 09-080. Upon his receipt of my recommendations, the Applicant indicated that he had not had the opportunity to comment on the public body's position. On a review of my file, it became apparent that I had, indeed, inadvertently not given him the opportunity to respond. I therefore advised the public body that my Review Recommendations should be considered as provisional only and I agreed to allow the Applicant to provide further submissions and comment.

The Applicant was seeking a copy of any minutes or other record kept of a meeting between two members of the management team in his former workplace and an unnamed fellow employee at which the subject of discussion was the Applicant's attendance at the workplace while on an extended sick leave. He was also seeking the name of the fellow employee. The public body conceded that such a meeting took place, but indicated no minutes or other record was kept of the meeting. They also refused to disclose the name of the fellow employee.

The issues on this review were twofold:

1. Did the public body provide a complete response to the Applicant's Request for Information?

2. Was the Applicant entitled to receive the name of the employee who met with the two managers to discuss the Applicant's visits to the workplace while on leave?

In the recommendations made, I found that:

- a) there was no reason to believe that any minutes had been taken at the meeting and, therefore, there were no records responsive to that part of the Applicant's request;
- b) the public body was justified in refusing to disclose the name of the employee, although pursuant to section 23(2)(h), not the section relied on by the public body

THE APPLICANT'S SUBMISSIONS

When given the opportunity to provide his submissions, the Applicant made a number of points.

1. He asked me to consider whether the ATIPP Co-Ordinator, who was tasked with responding to both his original Request for Information and my Review, was in a conflict of interest. He alleges that the ATIPP Co-Ordinator was both a manager and a member of the union and that because of this, that person was in a conflict in dealing with this particular request.

The Applicant believes he knows the identity of the employee who requested the meeting with management. He believes that this person and the ATIPP Co-Ordinator both played a pivotal role in his "wrongful dismissal" from his union in that they both, he believes, signed a petition to have him removed. He also believes that these people both attended a local union meeting at which his continued participation in the union was under discussion. He therefore believes

that there was collusion between these two individuals and that the ATIPP Co-Ordinator had an interest in protecting the identity of the employee who complained about him.

2. The Applicant felt that the public body's initial response to my inquiries was confusing and unclear. In this regard it is to be noted that it was necessary for me to ask the public body to clarify its initial submissions, which it did to my satisfaction.
3. It is the Applicant's position that the public body has "a history of hurting people mostly through psychological harassment and/or bullying applicable to managers and/or employees, seemingly acceptable by the employer" and felt that I would be unable to assess the situation fully without knowing the background. He provided me with a number of examples of the disfunction he alleges existed in the workplace. He conceded that my recommendations would "probably be appropriate" in a civilized and decent workplace, but felt that this workplace was neither civilized nor respectful and, therefore, the Act should be applied differently in this case, or at least the situation should be assessed differently. It is his view that the third party's intention in meeting with management was motivated by an "intent to cause [him] harm". He suggested that if I did not disclose the name, I was supporting a conspiracy to cause him harm.

DISCUSSION

I have read and considered carefully the Applicant's entire submission. It is clear that he feels that there was a concerted effort by a number of people to have him dismissed from his workplace, from his union and his position in the union and he is upset with the way things transpired. All of his allegations may well be true, or they may not be. My role is not to sort out the workplace politics or to determine whether or not the Applicant was treated unfairly or unjustly in the workplace. Nor, in making my recommendations,

am I “supporting” either the Applicant or the public body. I am merely interpreting and applying the Act as it is written. There are other avenues open to the Respondent should he wish for a determination of his rights as a result of his removal from the workplace and/or the union. The *Access to Information and Protection fo Privacy Act* is not the vehicle for that. Nor is it necessary that I reach any conclusions about the Applicant’s allegations about things that happened in the workplace in order to consider whether or not the public body acted contrary to the *Access to Information and Protection of Privacy Act* . My sole responsibility and jurisdiction under the *Access to Information and Protection of Privacy Act* is to assess whether the Applicant received all of the records responsive to his request and all of the information he was entitled to receive under the Act. Even if I were to accept everything that the Applicant said about the workplace in his submissions to me as being completely true, my conclusions would not change.

The Applicant would have me conclude that the situation between himself and the employees of the public body require that I should not simply accept their word that there were no minutes kept of the meeting in question. If the Applicant had provided me with some objective evidence of any kind to suggest that the public body was not being honest in their advice to me that no record of the meeting was kept, the situation might require further inquiry. There was no such evidence provided. The Applicant relies only on his own subjective opinion that there might be something that someone is trying to hide. From an objective viewpoint, based on what I have learned about the meeting from both the Applicant and the public body, including the outcome of the meeting (which did not involve any disciplinary steps) and the nature of the issue discussed, it would not be unusual that no record of the meeting was kept. In the normal course of any office management day, meetings take place. This is so whether it is a large office or a small office, a government office or a private sector office. Far more often than not, I would suggest, no notes or minutes or recordings are kept of meetings about routine management issues. In my opinion, based on what I have

heard from both the Applicant and the public body, this was a routine meeting to address a routine management issue. The Applicant has simply not provided me with anything from which I could conclude that it was more significant than that such that it is likely that minutes would have been kept of the meeting.

Nor, in my opinion, does the allegation that the ATIPP Co-ordinator and the Third Party were both members of the same union as the Applicant create an apprehension of bias. Almost all non-management employees of the government are members of the union, whether they want to be or not. Membership in the union does not always mean that the member is active or vocal about union matters and the Applicant has provided me with nothing to suggest that the ATIPP Co-Ordinator was an active and/or vocal union member. He suggests that a petition was signed with respect to the Applicant's continued eligibility in the union, but I have no proof that such a document even existed, let alone that the ATIPP Co-Ordinator signed it. Furthermore, and perhaps more importantly, it seems to me that the Applicant's eligibility to be a member of the union would be governed by the union's constitution and by-laws and the Applicant's employment status and would be completely unaffected by any petition that might be signed by other union members. The ATIPP Co-Ordinator, therefore, could not possibly have any impact on the Applicant's membership in the union, even if a petition was signed and submitted to the powers that be.

One has to look at the circumstances as a whole and, notwithstanding the Applicant's concerns about the ATIPP Co-Ordinator, there is simply nothing to suggest that the ATIPP Co-Ordinator would put his job on the line to hide minutes of a routine meeting in which routine management issues were discussed. I can understand the Applicant's subjective viewpoint, but have not been given any objective evidence that would support his allegations such that I would disbelieve the bona fides of the ATIPP Co-Ordinator in this case.

As far as the disclosure of the name of the person who met with the managers, the fact

of the matter is that that disclosure would have been an unreasonable invasion of the Third Party's privacy as discussed in Review Recommendation 09-080. Section 23(1) of the Act prohibits the disclosure of such information on a Request for Information. That is not to say that that person's name might not be directed to be disclosed in the context of litigation or other administrative proceedings. The Act does not prohibit disclosure where such disclosure is required by law. However, in the context of this Request for Information, the Act must prevail so as to prohibit disclosure. It may be that the Applicant will be given the name of the person who met with management in other proceedings, whether by order or subpoena or other legal obligation. But in this particular context, under the *Access to Information and Protection of Privacy Act*, the name cannot be disclosed.

My previous recommendations will, therefore, stand.

Elaine Keenan Bengts
Northwest Territories Information and Privacy Commissioner