

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 17-163

File: 16-180-4

June 1, 2017

BACKGROUND

The Applicant, a member of the press, made a request to the Department of Lands for information in relation to the efforts made by that department to save the Robertson Head Frame at Con Mine in Yellowknife. The public body identified 67 records consisting of 245 pages as being responsive to the request. Those records were provided to the Applicant, but with a number of redactions. The Applicant sought a review of the public body's application of sections 13(1)(b), 14(1)(b), 15(1)(a) and 23(2) to certain of the records.

THE RELEVANT SECTIONS OF THE ACT

The public body relied, variously, on the following exemptions to disclosure provided for in the *Access to Information and Protection of Privacy Act*:

1. Executive Council confidences

- 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;
 - (b) the contents of agendas, minutes or records of decision of the Executive Council or the Financial Management Board or deliberations or decisions of the Executive Council or the Financial Management Board;
 - (c) consultations among members of the Executive Council or the Financial Management Board on matters that relate to the making of government decisions or the formulation of government policy;
- ...

2. Disclosure of advice from officials

- 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;
 - (b) consultations or deliberations involving
 - (i) officers or employees of a public body,
 - (ii) a member of the Executive Council, or
 - (iii) the staff of a member of the Executive Council;
 - (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of the Northwest Territories or a public body, or considerations that relate to those negotiations;
 -
 - (g) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.
- (2) Subsection (1) does not apply to information that
- (a) has been in existence in a record for more than 15 years;
 - (b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;
 - (c) is the result of product or environmental testing carried out by or for a public body, unless the testing was done
 - (i) for a fee as a service to a person other than a public body, or
 - (ii) for the purpose of developing methods of testing or testing products for possible purchase;
 - (d) is a statistical survey;
 - (e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal;

- (f) is an instruction or guideline issued to officers or employees of a public body; or
- (g) is a substantive rule or statement of policy that has been adopted by a public body for the purpose of interpreting an enactment or administering a program or activity of the public body.

3. Privileged information

15. The head of a public body may refuse to disclose to an applicant
- (a) information that is subject to any type of privilege available at law, including solicitor-client privilege.

4. Personal privacy of a third party

23.(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

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

...

(d) the personal information relates to employment, occupational or educational history;

...

(h) the personal information consists of the third party's name where

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party;

THE DEPARTMENT'S SUBMISSIONS

The public body recognizes that several of the exceptions applied to the records in this case are discretionary in nature and that they must not only establish that the records which are redacted

meet the criteria for the application of the exception, but also show that they did, in fact, exercise their discretion. They have, in the case of the discretionary exceptions used, attempted to explain the things considered in the exercise of their discretion.

With respect to their application of the exemptions pursuant to section 14 (disclosure of advice from officials), the department noted that their concern relating to the public disclosure of advice and deliberations is that such disclosure will result in less candor among staff than is currently the case. There is a need, they argue, to preserve the relationship among public service officials and employees that allows for forthright, candid advice to decision-makers at all levels. They indicated that they judged the harm of disclosure of advice and deliberations based on the impact it could have on the Department's ability to carry out similar internal decision-making processes in the future, and they sought to withhold information that, if routinely disclosed, would make advisory processes less comprehensive, consultations or deliberations less frank, or further negotiations more difficult.

More specifically, they provided the following explanations:

Section 14(1)(a)

This sub-section was applied to information that the Department concluded reveals decision-making processes involving the giving of advice, recommendations and related analysis. We interpreted the exception to include both formal recommendations about a course of action to be followed and less formal advice or suggestions about particular approaches that might be taken. Where we deemed disclosure would damage the candidness of advisory processes relied on by government decision-makers, we redacted the information.

Section 14(1)(b)

This sub-section was applied to information that the Department concluded reveals a discussion or consideration by public service employees for or against a course of action, or that reveals the views of public service employees as to the appropriateness of particular suggestions or proposals. In deciding to withhold

information under this exception, the Department sought to preserve the frank exchange of views among service employees.

Section 14(1)(c)

This sub-section was applied to information that reveals plans, approaches and bargaining positions established or contemplated by the GNWT in its contractual negotiations with a third party over the Robertson Head Frame, including both particular draft agreement provisions and broad factors involved in developing the GNWT's particular negotiating position. We understood that this sub-section applies to such information even after particular negotiations have been completed and even when particular negotiations did not result in a final contractual agreement.

With respect to section 15, the public body points out that the Department was primarily concerned with the legal privilege that exists between a client and their legal counsel.

This sub-section was applied to information covered by solicitor-client privilege. In exercising our discretion under this sub-section, the Department's primary concern was preserving the confidentiality of communications central to the solicitor-client relationship. The department understands that if this privilege is waived at any time, it ceases to exist. In addition, in several cases, the particular content of the communications between the Department of Lands and its legal counsel reveals details about the GNWT's bargaining position in negotiations.

Section 13 prohibits the disclosure of records where the disclosure would reveal "a confidence of the Executive Council". The Department of Lands indicated that they understood the purpose of this subsection as being to protect the Executive Council's collective decision making process, enabling members to engage in the full and frank discussions necessary for good decisions.

The Department of Lands applied this mandatory exception to any information that we felt reveals such an Executive Council confidence, either explicitly or implicitly.

Subsection 13(1)(a) was applied to information that the Department identified as revealing advice, proposals, requests for direction, recommendations, analyses or policy options prepared for the Executive Council. In the case of documents provided directly to the Executive Council, or drafts of such documents they “elected to withhold the entire document” and where the record, in their opinion, indirectly revealed a confidence, they elected to redact only that portion of the record.

Subsection 13(1)(b) was applied to information that the Department considered would reveal, wholly or partially, the agenda or date of a particular Executive Council meeting, specific issues under consideration and any decisions made as a result. They note that, to the extent possible, they attempted to redact the information from the records but elected to withhold entire documents where the records had been provided directly to the Executive Council.

Subsection 13(1)(c) was applied to information that the Department considered revealed, wholly or partially, deliberations and discussions between Ministers in their capacity as Executive Council members (not in their duties as individual members).

There were several instances in which the public body also applied section 23, which prohibits the disclosure of personal information where that disclosure would constitute an unreasonable invasion of their privacy. Section 23(2) provides guidance and establishes circumstance which will raise a presumption of an unreasonable invasion of privacy. The Department says that they redacted personal information that related to:

- a) medical or treatment of an individual, including details about medical appointments of employees;
- b) a third party’s employment duties or activities (other than GNWT employees)
- c) a third party’s name, where that information would also reveal other personal information about the individual, such as employment activities

DISCUSSION AND RECOMMENDATIONS

I have the benefit of having received copies of all of the responsive records. Because the exceptions to the Act must be applied on a line by line basis, I will deal with each record which the Applicant has asked me to review. If a record is not discussed below, it is either because it

was disclosed without redactions or the Applicant is satisfied with any redactions made. When referring to page numbers, this refers to the numbers which the public body has assigned to each page in the package of responsive records. Further, the description of each document refers to the time and date of the first email on the first page of the record so as to aid in identification of the pages being discussed. I also note that in some cases a particular email appears in more than one record. I will comment only on the first appearance of each email and the same analysis and recommendations will apply to each time the email appears.

Document #1 - Email dated July 14, 2016, 09:24:41 (pages 1 and 2)

This record consists of an email chain between Department employees, including communications staff. The public body has redacted portions of the body of three of the emails in the chain, in each case pursuant to section 14(1)(b). They argue that each of the redactions contains conclusions and deliberations of a public service official related to communications planning and that if disclosed, these discussions would “affect the candor of communications officials from outside the Department in sharing information necessary to communications planning”. They do not provide any real explanation as to why they think that this is the case. Nor do they explain the various roles of the participants in the discussion.

Section 14 requires some interpretation, particularly in light of the general scheme of the Act which provides that all records in the custody or control of public bodies are subject to disclosure and that exceptions, when they exist, should be narrowly interpreted and applied. It would be contrary to that general scheme of the Act if every discussion between two government employees in which a particular issue is being debated or discussed could be defined as “advice or recommendations” and thus be protected from disclosure. That is not, in my opinion, the appropriate approach. In interpreting this section, therefore, I have looked to the interpretation given to similar sections in other Canadian jurisdictions.

In Order 96-006, the former Information and Privacy Commissioner of Alberta established a test to determine whether information is advice, recommendations, analyses or policy options within the meaning of their section 24(1)(a). I have adopted this test in previous recommendations:

That Order held:

Accordingly, in determining whether section 23(1)(a) [now section 24(1)(a)] will be applicable to information, the advice, proposals, recommendations, analyses or policy options (“advice”) must meet the following criteria.

The advice should:

- i. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
- ii. be directed toward taking an action,
- iii. be made to someone who can take or implement the action.

In the same case, he goes on to say:

The word "analysis" is not defined in the FOIP Act. According to the *Canadian Oxford Dictionary, 2nd Edition*, "analysis" means "a detailed examination of the elements or structure of a substance, or the statement of the results of this examination". This definition was adopted in Order 97-007. The former Commissioner said:

"Analyses" is defined in the *Concise Oxford Dictionary*, 9th edition, (New York: Oxford, 1995) as: *a detailed examination of the elements or structure of a substance etc.; a statement of the result of this.*

While there is some discretion exercised in choosing which facts are gathered, without more, a compilation of facts is not an analys[is]. Gathering pertinent factual information is only the first step that forms the basis of an analys[is]. It is also the common thread of "advice, proposals, recommendations, or policy options" because they all require, as a base, a compilation of pertinent facts.

"Advice" then, is the course of action put forward, while "analyses" refers to the examination and evaluation of relevant information that forms, or will form, the basis of the advice, recommendations, proposals, and policy options as to a course of action.

Again in Order 96-06, the Alberta Information and Privacy Commissioner considered the meaning of the term "consultations and deliberations". He said:

When I look at section 23 as a whole, I am convinced that the purpose of the section is to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is, I believe to allow such persons to address an issue without fear of being wrong, “looking bad” or appearing foolish if their frank deliberations were to be made public. Again, this is consistent with Ontario and British Columbia. I therefore believe a “consultation” occurs when the views of one or more officers or employees is sought as to the appropriateness of particular proposals or suggested actions.

That said, it is also clear that “consultations and deliberations” do not include most of the day to day discussions that happen in a government office. Order F2004-026, the Alberta Information and Privacy Commissioner noted:

In my view, section 24(1) does not generally apply to records or parts of records that in themselves reveal only any of the following: that advice was sought or given, or that consultations or deliberations took place; that particular persons were involved in the seeking or giving of advice, or in consultations or deliberations; that advice was sought or given on a particular topic, or consultations or deliberations on a particular topic took place; that advice was sought or given or consultations or deliberations took place at a particular time. There may be cases where some of the foregoing items reveal the content of the advice. However, that must be demonstrated for every case for which it is claimed.

Applying all of this to the redactions in Record #1, the redacted portions of this email chain do not appear to be aimed at providing any advice of any kind to any person. Nor does the exchange suggest that the views of any particular employee was being sought “as to the appropriateness of” any particular proposal or suggested action. I am not satisfied that any of the redacted portions of this exchange are excepted from disclosure pursuant to section 14. I **recommend** that this record be disclosed without any editing.

Record #2 - Email dated July 14, 2016, 13:40:24 (Pages 3 to 8)

This is a six page email chain in which the public body has made a number of redactions pursuant to several sections of the Act. Starting at the end of this record, with page 8 and the first email in the chain, the chain began with an inquiry from a third party outside of the government. The name, email address and telephone number of the author of the email has all been redacted. I am satisfied that the information on page 6 of this record has been properly redacted pursuant to section 23. This name has been redacted in several of the records and, rather than address it each time it appears, I will simply say that in each instance, the name has been appropriately redacted.

Moving up the chain, on the bottom of page 7, the public body is, once again, relying on section 14 for the redaction of large parts of the emails on this page. In the email at the bottom of the page, an employee is seeking advice from colleagues. It is, unfortunately, not entirely clear simply from the email itself what the chain of command is or whether any of the individuals involved have the power to make decisions. That said, it appears that the redactions from the last two emails on the page do constitute an exchange in relation to how to deal with a particular issue and it appears that the recipient of the advice does seem to have some power to make the decision in question. For that reason, I agree that these two emails meet the criteria for an exemption pursuant to section 14(1)(b).

I am not entirely convinced that the disclosure of this exchange would result in less candor between the parties involved in the discussion. The public body has provided me with no particular reasons that they feel this might be the result. It seems to me that this is general, run of the mill advice from one employee to another, within the responsibilities of the respective members of the organization. There is nothing terribly controversial or unexpected about the advice. It is not, however, for me to judge how the discretion exercised, only to determine whether or not it was exercised.

The email at the top of this page has also been redacted pursuant to section 14(1)(b). There is, in my opinion, nothing that constitutes a "consultation or deliberation" in the first sentence of this email. I **recommend** the disclosure of the words following "advised him" to the end of that sentence. I am satisfied that the balance of the redacted portion of this email meets the criteria for an exemption pursuant to section 14(1)(b) and that the public body has exercised its discretion.

The next page up the chain (page 6) contains a number of redactions pursuant to section 23 of the Act and I am satisfied that the disclosure of these items would constitute an unreasonable invasion of the privacy of various individuals and have, therefore, been properly redacted.

In the middle of this page, the public body had redacted most of the body of one email pursuant to section 14(1)(a). This redaction clearly contains advice on how to address the communications strategy, appears to be from an individual whose job it is to give such advice and appears to be given to someone who has responsibility for making that decision. The criteria for section 14(1)(a) exception has been met and I am satisfied that the public body has exercised its discretion with respect to same.

There is one redaction pursuant to section 14(1)(b) on page 5. To me, the appropriate section would be section 14(1)(a) as the redacted piece clearly constitutes advice or recommendations. I am not convinced that the disclosure of this piece of advice would in any way interfere with future candid discussions, but it is not for me to question how the public body exercised its discretion, only to judge whether that discretion was exercised. Unless the exercise of discretion is so unreasonable as to be no exercise at all, all a public body has to do is show that they have put their minds to the pros and cons of disclosure.

Moving up to page 4 of this record, there is one portion of a sentence redacted pursuant to section 14(1)(b) on this page. This exchange is not about consultations or deliberations about a decision to be made. Rather, it is a comment on how things were done and how they might be done better next time. It does not meet the criteria for an exemption pursuant to section 14(1)(b) and I **recommend** it be disclosed.

On page 3, the public body redacted a portion of an email pursuant to section 13(1)(b). Section 13 is a mandatory exception so, if the disclosure would "reveal the contents of agendas, minutes or records of decision of the Executive Council or the Financial Management Board or deliberations or decisions of the Executive Council or the Financial Management Board" it cannot be disclosed. The redacted portion of this email refers to a cabinet meeting to be held on a specific date. There is nothing in the date that would reveal the contents of the agenda or anything other than a cabinet meeting was to be held on a particular day. I see no reason why this date should be redacted and I **recommend** it be disclosed. Further, while the rest of the redacted portion of this email makes reference to one of the items that will be on the agenda for that meeting, more of this sentence can be disclosed without revealing the specific agenda item.

I **recommend** the disclosure of the entire sentence but for the last word in the first line of the sentence and the first word of the second line.

Further up the page, the public body has employed section 14(1)(b), saying that the content of the email is part of a “consultation or deliberation”. I disagree. It is a comment on something that has happened. There is no decision to be made based on the statement. Rather it is a comment about how things might be done better the next time. I **recommend** that this email be provided to the Applicant without any editing.

Document #3 - Email dated July 14, 2016, 14:26:49 (pages 9 to 12)

Most of this email chain is also contained in Document #2 and I will not repeat my comments, but note that they apply. The public body claims that the redacted portion of the new emails in the chain consists of “consultations or deliberations”. Again, however, the subject of the email is something that the participants in the discussion feel they could have done better and that this is something they should consider how to change. There is no decision being made around the issue, just a flag for something to consider in the future. It does not amount to a “consultation or deliberation”. I **recommend** that these emails be disclosed.

Document #25 - Email dated July 20, 2016, 12:03:40 (page 114)

The public body has relied on section 14(1)(b) to withhold the content of the email at the top of this page. The email is written in response to another email attaching the “quasi final” draft of a paper that is being made public in some fashion and asking for final input from others. The email redacted is clearly a response to that and it is clear that decision is intended to be made on several issues. As such it meets the criteria required for the exception contained in section 14(1)(b) - consultation and deliberation. I am, further, satisfied that the department has exercised its discretion. I make no recommendation with respect to his document.

Document #29 - Email dated July 20, 2016, 12:32:00 (pages 119 and 120)

Portions of 2 emails in this chain have been withheld pursuant to section 14(1)(b). This set of emails is very similar to the redacted portion of Document #25 and the same comments apply. I make no further recommendation with respect to this document.

Document #30 - Email dated July 20, 2016, 13:10:05 (pages 122 and 123)

The redacted portions of this email are duplicates of the emails in Document 29 and should be dealt with accordingly.

Document #34 - Email dated July 22, 2016, 09:04:15 (page 170)

The public body has redacted certain information from the email at the top of the page pursuant to section 14(1)(b) and have deleted the name of one individual pursuant to section 23(2)(d). I am satisfied that the redaction pursuant to section 23 is appropriate and make no further comment.

In regard to the redactions made pursuant to section 14(1)(b), the email begins with the words "See FYI". This tells me that it was sent for informational purposes only. There is no decision to be made and no consultation intended. There is no suggestion that there is a deliberation under way. It is merely an observation or the sharing of information. This email does not meet the criteria for an exception under section 14(1)(b). I **recommend** that it be disclosed.

Document #37 - Email dated July 28, 2016, 14:26:37 (Page 174)

A major part of the email in the middle of this page has been redacted on the basis that it is "advice, proposals, recommendations, analyses or policy options developed by or for a public body (section 14(1)(a)).

The redacted section does contain a suggested way of dealing with a particular issue. Unfortunately, I have no idea what the position of the author of the suggestion is or whether it is her responsibility to make such suggestions. Further I have not been provided with information about whether the recipient of the email (or anyone else copied on it) has the ability to make the decision to be made. I can only surmise from the context of the record that there was decision making effort in play. It appears, therefore, that the communication meets the test for application of section 14(1)(a). I therefore make no further recommendation.

Document #38 - Draft Statement (Page 175)

This is a draft copy of a statement being developed for the public body on the issue of the Con Mine Head Frame which appears to have been attached to one of the emails in Document #37. It was clearly sent for input from others and would qualify for an exemption pursuant to section 14(1)(b) - consultation and deliberation. The public body has claimed an exemption under section 14(1)(a). While I think they have applied the wrong subsection, I do believe that it is subject to a discretionary exemption and I make no recommendations with respect to this record.

Document #39 - Email dated July 28, 2016, 15:19:24 (pages 179 to 180)

The last email in this page has been almost entirely redacted pursuant to section 14(1)(a) as "advice, proposals, recommendations, analyses or policy options". There is no analysis involved in the redacted portion, and there are no policy options discussed. Nor is there any advice, proposal or recommendation made. It does not qualify for an exemption pursuant to section 14.

That said the content of the redacted portion is clearly intended to provide a briefing to the Minister as to the results of certain steps taken by the public body. As such, there is mandatory exception to the disclosure of this part of the record pursuant to section 13(1)(d) of the Act which prohibits the disclosure of "briefings to members of the Executive Council". I am, therefore, satisfied it was properly redacted, though the public body relied on the wrong section to justify the redaction.

Document #40 - Email dated July 28, 2016, 16:00:40 (Pages 181 to 183)

Starting from the end of this record (page 183), the public body has redacted twelve words from the last email on the page pursuant to section 14(1)(c) which gives a public body the discretion to refuse to disclose information where the disclosure could reasonably be expected to reveal "positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the GNWT or considerations that relate to those negotiations". While the redacted words relate to the possibility of certain negotiations that might occur, there is nothing in them that would reveal any positions, plans, procedures, criteria or instructions" with respect to those possible negotiations - simply that they might happen. I am not convinced that this redaction meets the criteria for an exemption pursuant to section

14(1)(c) and I **recommend** that this be disclosed.

Moving up the record, there is a portion of the last sentence of the email that starts on page 182 and ends on page 183 that the public body has redacted pursuant to section 14(1)(b). While it may be possible to say that the redacted words constitute advice, it would be a bit of a stretch. Further, I do not see how the disclosure of this information could possibly result in the employee being less forthcoming in the future if this section were disclosed. In the end, I **recommend** that the public body take another look at this redaction and reconsider their position.

Finally in this record, the public body has redacted one line from the second to last email on page 182 pursuant to section 14(1)(a). There is nothing in this line that, in my opinion, would qualify it for an exemption pursuant to section 14(1). I **recommend** it be disclosed

Document #41, Email dated July 28, 2016, 16:59:13 (Pages 185 to 187)

The public body redacted virtually the whole body of an email that starts on the bottom of page 185 and goes on to page 186. The content of this email is very similar to that contained in Document #39 and should be addressed accordingly.

Document #43, Email dated July 28, 2016, 17:21:35 (Page 191)

The public body has redacted 12 words from one of the emails on this page pursuant to section 14(1)(b) - consultation and deliberation. While the first six words would reveal the subject of a consultation, the last six would not. I therefore **recommend** that the last six words redacted be disclosed.

Document #44 - Email dated July 29, 2016, 09:00:30 (Pages 193 and 194)

Portions of this record have been redacted pursuant to section 14(1)(a) as being "advice" from one employee to another. The portions redacted are clearly part of an outlined "suggested approach" to a particular issue and would qualify for an exception as advice and/or recommendations. I would merely comment that, by the time this Request for Information was received, the decisions with respect to this issue had been made and, it appears, followed. I question, therefore, how the disclosure of these statements might prevent candid advice in the future. I **recommend** that the public body look at this record again and reconsider the exercise

of its discretion with respect to some or all of the sections which have been redacted.

Document #46 - Email dated July 29, 2016, 10:50:10 (Page 197)

Three portions of this record have been redacted on the basis that they constitute consultation or deliberations. One of these emails has been dealt with above in Document #43 above and will not be commented on again.

A portion of the first redaction on this page reveals advice received from legal counsel. As such, it may well be subject to an exception pursuant to section 15(a).

The last three words of the second line and the first six words of the third line, however, do not fall within that exception. I therefore **recommend** that the latter part of the redacted portion be disclosed.

The second redaction on the page would be classified more in the realm of a comment than a consultation and there does not appear to be any consultation or deliberation involved. I refer, again to the determination of the Alberta Information and Privacy Commissioner in Order F2004-026 that section 14 does not apply to the disclosure of the following kinds of information:

- that advice was sought or given, or that consultations or deliberations took place;
- that particular persons were involved in the seeking or giving of advice, or in consultations or deliberations;
- that advice was sought or given on a particular topic, or consultations or deliberations on a particular topic took place;
- that advice was sought or given or consultations or deliberations took place at a particular time.

I **recommend** that the second redacted section on on this page be disclosed.

Document #48, Email dated July 29, 2016, 11:25:15 (pages 201 and 202)

There are two portions of this email which have been redacted pursuant to section 15(a) of the Act - they claim that the information is subject to solicitor/client privilege. I agree. The excerpts

redacted are clearly requests for/receipt of legal advice involving the public body's lawyer. In such circumstances, section 15(a) applies. The middle section has been redacted pursuant to section 14(1)(b). While it does not, in my opinion, meet the test for that section, it is part of the exchange between the lawyer and his client and is, therefore, covered by solicitor/client privilege and would be properly withheld pursuant to section 15 (a). I therefore make no recommendations with respect to the redactions in this document.

Document #50 - Email dated July 29, 2016, 12:27:19 (Page 204)

The middle section of this email has been redacted pursuant to section 14(1)(c) which allows a public body to refuse to disclose information where the disclosure could reasonably be expected to reveal "positions, plans, procedures, criteria or instructions" developed for the purpose of contractual or other negotiations. The only thing that the redacted portion of this email reveals is that there has been approach to the department from a third party to talk about an issue. The disclosure of this sentence will in no way disclose any "positions, plans, procedures, criteria or instructions" related to that issue. I **recommend** that this paragraph be disclosed.

Document #51 - Draft letter (Page 205)

This document appears to be a letter from a GNWT official to a third party company with respect to a decision made by the GNWT and the reasons for that decision. This has been withheld pursuant to section 14(1)(c). There is nothing in this letter that would reveal any "position, plan, procedure, criteria or instructions" in relation to an ongoing or even a planned negotiation. I therefore **recommend** that this page be disclosed.

Document #52 - Email dated July 29, 2016, 13:36:35 (Pages 206 and 207)

A portion of one of the emails in this record has been redacted pursuant to section 14(1)(a) on the basis that it is "advice, proposals, recommendations, analyses or policy options" developed by or for a public body. I am satisfied that the redacted portion constitutes advice and recommendations and has been appropriately redacted.

Document #53 - Email dated July 29, 2016, 13:38:37 (Pages 209 and 210)

One of the emails redacted on this page has already been discussed as part of Document #52 and should be dealt with accordingly. The only other redaction on this page appears at the top of page 209 and is pursuant to section 13(1)(c) on the basis that it would reveal “consultations among members of the Executive Council...on matters that relate to the making of government decisions”. The first seven words of the redacted portion serve only to reveal that there were discussions about an issue, without revealing any substance of that discussion. I **recommend** that these seven words be disclosed. The remainder of the line might reveal the substance of the discussion and is therefore subject to a mandatory exception to disclosure.

Record #55 - Letter (pages 214 and 215)

This is the formal version of the record discussed as Document #51 and it should be dealt with accordingly.

Record #57 - Email dated August 2, 2016, 09:26:16 (pages 222 to 224)

Again, working backwards from the beginning of this chain (first in time) to the end, the first redaction appears on page 223. The department relies on section 14(1)(b) (consultations or deliberations) for this redaction. I agree with the public body that it is either part of a consultation or the provision of specific advice and that it is subject to an exception pursuant to section 14.

The next redaction is at the bottom of page 222 and, again the public body relies on section 14(1)(b). The redacted statement is not part of a consultation or deliberation, nor can it be considered advice or recommendations. Instead, it is merely a statement by the employee about his opinion about something that had already been done. I see no reason not to disclose this statement. I **recommend** that this section be disclosed.

Moving up the page, again the public body relies on section 14(1)(b) in refusing disclosure. There is nothing in the statement redacted in the middle of page 222 which is aiding in the development of advice or recommendations, nor is it part of a consultation. It is a statement about a decision already made. I **recommend** that this section also be disclosed.

Finally, at the top of this page, the public body relies on section 14(1)(b) for its refusal to disclose most of the body of this email. Again, I don't see anything in this email that is directed

to the making of any particular decision. It is a comment made by a senior official about a decision already made and why it was made. There is no consultation or deliberation process involved in the statement. I **recommend** that this email also be disclosed.

Record #58 - Email dated August 2nd, 2016, 14:10:34 (pages 225 to 226)

The email at the bottom of page 225 has a large portion which has been redacted pursuant to section 14(1)(b). The email, as a whole, constitutes a request by one employee for input on how to address a particular issue. I am satisfied that the redacted portion meets the criteria for an exception under either section 14(1)(a) or 14(1)(b). The same holds true for the redaction at the top of the page.

Record #59 - Email dated August 2, 2016, 15:55:23 (page 227)

A number has been redacted from this page pursuant to section 14(1)(b) of the Act. There is nothing in the number, or in the number combined with the balance of the email that constitutes a consultation or a deliberation aimed at a particular issue. It is a statement of fact. I **recommend** that this number be disclosed.

Record #60 - Email dated August 2, 2016, 16:31:00 (pages 228 and 229)

This entire record has been redacted pursuant to section 14(1)(a) of the Act. Again, starting on the first email in the chain (first in time), this email is addressed from the Minister to another Member of the Legislative Assembly. It is an explanation for a decision made by cabinet about the possible preservation of the Robertson Head Frame. As such, disclosure of this email would reveal "a decision" of the Executive Council, contrary to section 13(1)(c). It has been properly withheld pursuant to section 13(1)(c) (but not pursuant to section 14(1)(a)). I do, however, **recommend** that the introductory portions of the email, showing the date and time of transmission and author of the email be disclosed.

Moving up the page, the next email poses a question about the earlier email. While the entire email has been redacted, in my opinion, some of it might be revealed without revealing a cabinet confidence. I **recommend** that it be disclosed but for 11th and 12th words in the body of the email.

The next email in the chain contains nothing that would meet the criteria for an exception under the Act and I **recommend** that it be disclosed.

Finally with respect to the first email on page 228, I agree that the disclosure of the middle portion of this email would reveal the nature and content of advice given and it meets the criteria for an exemption pursuant to section 14(1)(a). I **recommend**, however, that the balance of the email be disclosed.

Document #61 - Email dated August 2, 2016, 22:42:39 (pages 230 to 233)

The public body relies on section 14(1)(b) for its refusal to disclose portions of both the emails at the top of this chain. There is also a small portion of an email redacted pursuant to section 23 as being an unreasonable invasion of the personal privacy of an individual. I agree with this application of section 23.

Insofar as the other redactions on this page, there is nothing in the redacted portion of the emails which in any way constitutes advice, proposals, requests for directions analyses or policy options developed for the public body. Rather, both emails contain reactions to a press release sent out by the government earlier in the day. I **recommend** that these emails be disclosed.

Document #62 - Email dated August 3, 2016, 09:02:06 (pages 234 and 235)

Most of this email has been redacted pursuant to section 14(1)(a). This email really is a briefing to the Minister with respect to matters arising from the press release that had been sent out the previous day. As such, it is more properly withheld pursuant to section 13(1)(d). Either way, however, the redaction was justified under the Act.

Document #65 - Email dated August 3, 2016, 16:19:22 (pages 238 to 241)

A portion of the email on the first page of this record has been redacted pursuant to section 23(1)(a) of the Act. I agree that the disclosure of this information would constitute an unreasonable invasion of the privacy of the author of the document.

The remainder of this record is a three page list of questions and proposed answers that was

included in the email as an attachment. The public body has disclosed the questions, but not the suggested answers. These have been withheld pursuant to section 14(1)(a). The document is noted as being “confidential”. At the time this list of questions and answers was prepared, it would have constituted advice and recommendations and have been subject to the exemption provided for in section 14(1)(a). As such, the exemption was properly applied. That said, in light of the fact that these issues are now behind us, and the decisions have been made surrounding the issue, and all press conferences with respect to the issue have long since been held, I **recommend** that the public body reconsider whether the disclosure of this information would really in any way affect the candor with which those involved will approach their responsibilities under the Act and exercise their discretion in favour of disclosure. I note, as well, that there is no authorship attached to this document which might reflect back on an individual such that less candor would be anticipated in the future.

Elaine Keenan Bengts
Information and Privacy Commissioner