



Highways and Public Works
PO Box 2703
Whitehorse, Yukon Y1A 2C6

Via Secure File Transfer e-mail

Complainant: [REDACTED]

July 14, 2022

Re: Notice of Response on Recommendations – ATP-ADJ-2022-02-045 on Request #21-310

Dear Complainant:

On June 22, 2022, the Public Body received the Information and Privacy Commissioner's Inquiry Report, which provided the following recommendations:

- Because the Department Head did not meet their burden of proving that subsection 70(1) applies to the information redacted in the redacted Records as determined by me, I recommend that the Department Head disclose the redacted Records in their entirety to the Complainant.
- Because the Department Head did not disclose the unredacted and redacted Records in an electronic format ordinarily held by the Department and capable of re-use by the Complainant as required by subsection 64(5) together with paragraph 64(1)(c) and subsection 65(3), I recommend that the Department disclose the unredacted and redacted Records to the Complainant in their original format or another format that is capable of re-use by the Complainant in accordance with the applicable provisions in section 65.

We respectfully disagree with the adjudicator's determination that aggregated data is not the same as the information contained in a motor vehicle report.

In a Supreme Court of Canada case "*British Columbia v Philip Morris International Inc.*, 2018 SCC 36 (CANLII), [2018] 2 SCR 595", there is a similar context where the recorded

information about individuals was stored on an aggregate basis. The judge determined at paragraphs 22-24 that it remained to be information and records of a particular individual.

The public body also concurs with the Yukon Bureau of Statistics advice that several data fields included in the Records had a strong possibility of being directly linked back to an identifiable individual. Therefore, the Public Body rejects recommendation 1.

The Public Body further respectfully rejects recommendation 2 as it relates to recommendation 1, because no information will be released. However, in future responses to access requests the Public Body will communicate with applicants to seek confirmation regarding providing access to records in accordance with section 65 of the *Access to Information and Protection of Privacy Act*.

In accordance with paragraph 105(1)(a) of the *Access to Information and Protection of Privacy Act*, the Complainant may apply to the Court for a review of the decision to reject the recommendation not later than 30 business days after the day this notice is provided.

Sincerely,

A solid black rectangular redaction box covering the signature of Paul McConnell.

Paul McConnell
Deputy Minister
Department of Highways and Public Works

C: Office of the Information and Privacy Commissioner
Attn: Jason Pedlar, Registrar