



Department of Environment
PO Box 2703, Whitehorse, Yukon Y1A 2C6

August 28, 2025

[REDACTED]
Complainant
[REDACTED]

Dear [REDACTED]

RE: Investigation Report File ATP-ADJ-2025-05-096

The Department of Environment is in receipt of the Information and Privacy Commissioner (IPC)'s July 18, 2025, report and recommendations Access Information Request 24-504. This letter serves as the Department of Environment's notice as required under Section 104(b)(ii) of the Access to Information and Protection of Privacy Act (ATIPPA) (2018).

Decision:

The Head of the Department of Environment accepts the IPC's recommendations in part. Please refer to the table below highlighting the decisions.

Issue	Provision	Pages	Accepted (A) / Not Accepted (NA)
2	72(1)(b)(i)	0114 0132, 0134	A A
4	73(a)	0002 – 0004	NA
5	74(1)(a)	0030 0031 0042 – 0049 0045 0046 0048 0049 0074 0126	A A N/A N/A N/A N/A N/A A A

		0132, 0134 0187	A A
6	76(1)	0030 – 0031 0056 – 0068 0072 0074 0109 0114 0125 0126 0132, 0134	A N/A A A A A A A A
7	77(1)(b)	0002 – 0004 0014-0015 0016-0019 0020-0021 0023-0024 0026-0028 0030-0031 0056-0068 0131 0193-0205	N/A N/A N/A A A N/A A N/A N/A N/A

Reasons:

The records noted as “N/A” are withheld for all the reasons, evidence, and rationale provided and raised to the applicant, as well as to the IPC during the “informal” consultation process and formal investigation.

The Head confirmed that the Receiver holds a strong view that it is important for the Receiver and the Government of Yukon “YG”, Department of Environment to be able to communicate freely about the situation without the hindrance of concern that documents supplied in confidence may be easily disclosed to the public. Any disclosures made must be undertaken with completeness and the full context of the evolving situation to ensure that the records are not misinterpreted. Polishing all such draft records would not be conducive to the kind of high speed and complex situation with which the Receiver and YG are dealing with concerning the mine. In this unusual mine incident and situation, it

is not in the public interest to slow the exchange of written communications to take into account potential public disclosure. The Head takes the view that disclosure of confidential information made without the consent of the Receiver would be a breach of the position agreed upon by YG and would result in repercussions.

Additionally, the public body will not waive legal privilege for the rationale previously cited and raised. The purpose of legal privilege is to facilitate and enable clients the ability to have full, frank, and candid communication. This has been a long-standing integral aspect of the legal system as a whole. This aspect is so fundamental that the Supreme Court of Canada views legal privilege as a common law and constitutionally protected right under the *Canadian Charter of Rights and Freedoms*. There is also legal precedent noting that while it is not necessary for the communication to specifically request or offer advice, if it can be placed within the continuum of communication in which the solicitor tenders advice; it is not confined to telling the client the law and may include advice as to what should be done in the relevant legal context. The Head determined that this information will remain redacted given the gravity and nature of the context and case at hand, the subject matter of the advice, and circumstances in which it is sought and rendered. Furthermore, with due respect, it is not up to the IPC to direct the Public Body to waive privilege. That decision is reserved for the Attorney General and deputy Attorney General.

In accordance with paragraph 105(1)(a) of the ATIPPA, 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,

Dennis Berry
Deputy Minister, Department of Environment

Enclosure: Records Package
Cc: Adzo Baku, Registrar, Office of the Information and Privacy Commissioner