



Yukon  
Information  
and Privacy  
Commissioner

## INQUIRY REPORT

File ATP15-037AR

Pursuant to section 52 of the  
*Access to Information and Protection of Privacy Act*

Diane McLeod-McKay, B.A., J.D.

Information and Privacy Commissioner (IPC)

**Public Body:** Department of Justice (Justice)

**Date:** May 30, 2016

### Summary

The Applicant requested the IPC review a decision by the Department of Justice to sever a third party's personal telephone number from a record requested under the *Access to Information and Protection of Privacy Act*. In the response provided, Justice cited subsection 25 (1) as authority to separate or obliterate the information from the record.

Following the review, the IPC found that disclosure of the telephone number to the Applicant on the facts of this case would constitute an unreasonable invasion of the third party's personal privacy in accordance with section 25 and affirmed Justice's decision.

## Statutes Cited

*Access to Information and Protection of Privacy Act*, RSY 2002 c.1, section 25.

## Cases Cited

*Branigan v. Commissioner of the Yukon Territory*, 2004, 2004 YKSC 79 (CanLII)

Order 02-27, Public Guardian and Trustee of British Columbia, Office of the Information & Privacy Commissioner for British Columbia, [2002] B.C.I.P.C.D. No. 27

## Explanatory Notes

All statutory provisions referenced below are to the *Access to Information and Protection of Privacy Act* (ATIPP Act) unless otherwise stated.

## I BACKGROUND

[1] In a request for access to records form (Access Request) dated April 14, 2015, the Applicant requested the following from the Justice.

*1) Land Titles Office: The applicants are joint owners of [land]. All records incl. but not limited to correspondence, e-mails, etc. starting in Jan. 2007 (approx.) to present. (Records may also be found under [business name]).*

*2) Sheriff's Office: File #s [files] Date: Nov. 2011 to present. All records incl. but not limited correspondence, e-mails, legal documents, etc.*

[2] In a letter dated April 14, 2015 addressed to the Applicant, the Records Manager confirmed receipt of the Access Request and informed the Applicant that the information she was seeking in her Access Request had been forwarded to Justice. The Records Manager also identified the deadline to respond to the Applicant's Access Request as May 14, 2015.

[3] In a letter dated April 28, 2015, a fee estimate was provided to the Applicant and on May 13, 2015, the Records Manager waived the fee. The timeline to respond to the Access Request was suspended while processing the fee request.<sup>1</sup> As such, the new deadline for the Records Manager to respond was changed to May 29, 2015.

[4] In a letter dated May 22, 2015, the Records Manager notified the Applicant about the need to extend the response deadline to June 27, 2015, on the basis that Justice required additional time to carry out third party consultations in respect of the records.

[5] In a letter dated May 25, 2015, the Records Manager provided the Applicant with an interim response. He informed the Applicant that she was being granted access to 201 records that were determined to be related to her request. He identified that Justice had separated or obliterated some information from these records in reliance on “sections 18 (a) and 25 (1) of the ATIPP Act.” The Records Manager further informed the Applicant that 25 more records may be provided following third party consultations.

[6] A schedule of records was provided by Justice to the Applicant along with the May 25, 2015, letter from the Records Manager. The numbers of the records in the schedule are 1 to 75 and 79 to 201. There are no records identified as number 76, 77, or 78.

[7] On June 17, 2015, the Applicant received the final response to her request from the Records Manager in which he identified that he was providing her with full access to the remaining 25 records that were related to her request.

[8] On July 16, 2015, the Applicant requested I review Justice’s decision to separate or obliterate information from three records numbered 26 and attachment, 103 and 122.

[9] I authorized an investigator to mediate a settlement between the parties and on September 8, 2015, I was informed that mediation was unsuccessful.

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<sup>1</sup> See paragraph 11 (2)(b).

## II INQUIRY PROCESS

[10] The Registrar sent the Notice of Inquiry dated October 7, 2015, to the parties followed by an amended Notice of Inquiry<sup>2</sup> sent on October 15, 2015.

[11] The deadline for submissions in the Notice of Inquiry was October 29, 2015. Both parties requested an extension which was granted. The Applicant made procedural objections on October 21, 2015, which were addressed on October 28, 2015. Initial submissions were received from the Applicant on November 20, 2015 and from Justice on November 20, 2015.

[12] The Registrar exchanged the initial submissions with the parties and the deadline to reply was set as December 7, 2015. The Applicant requested an extension which was granted. The Applicant's reply submissions were received on December 8, 2015.

[13] On January 29, 2016, following my review of the submissions received from the parties, I requested, in a letter to Justice that I shared with the Applicant, that Justice provide me with additional submissions on why the information that was separated or obliterated from record 103 is personal information and how subsection 25 (1) applies to this information.

[14] On February 12, 2016, I received a procedural objection from the Applicant in relation to my request to Justice which was addressed.

[15] On February 17, 2016, I received Justice's additional submissions. These were provided to the Applicant so that she could reply to them. Her deadline to reply was March 3, 2016. She requested an extension which was granted. Her new deadline to reply was March 22, 2016.

[16] On March 22, 2016, I received the Applicant's reply submissions and on March 23, 2016, the Applicant provided an amended reply submission, which I agreed to accept.

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<sup>2</sup> The amendment made was to correct our file number referenced in the original Notice of Inquiry as "ATP15-001AR". It should have read "ATP15-037AR".

### III JURISDICTION

[17] Paragraph 48 (1)(b) of the ATIPP Act authorizes me to review a decision by a public body to separate or obliterate information from a record requested by an applicant. Subsection 52 (1) authorizes me to conduct an Inquiry and decide all questions of fact and law arising in the course of Inquiry.

[18] Justice is a public body as defined in the ATIPP Act. In response to the Applicant's Access Request records numbered 26 and attachment, 103 and 122, Justice separated or obliterated information from these records. Given this, I have authority to conduct an Inquiry in order to determine whether Justice's decision to refuse this access was authorized by the ATIPP Act.

### IV RECORDS AT ISSUE

[19] During the process of gathering and exchanging submissions between the parties in preparation for this Inquiry, Justice decided to revisit its decision regarding records numbered 26 and attachment, and 122.

[20] In its submissions dated November 20, 2015, Justice indicated that record number 26 and attachment were being released to the Applicant on the basis that Justice had decided to waive the privilege for the information originally separated or obliterated. It also indicated that it was providing access to the personal information in record 122 on the basis that this information was "read aloud in Court on [REDACTED] [REDACTED]" and that "information that had previously been disclosed to the applicant did not constitute an *unreasonable invasion of personal privacy*." [Emphasis in original].

### V ISSUE

[21] The issues for Inquiry that were identified in the Notice of Inquiry were as follows:

1. *Is the Department of Justice authorized by subsection 18 (a) of the ATIPP Act to refuse the applicant access to the part of record #26 and the attachment to that record #26 that was separated or obliterated?*

2. *Is the Department of Justice authorized or required by subsection 25 (1) of the ATIPP Act to refuse the applicant access to the part of records #103 and #122 that was separated or obliterated from the records?*

[22] Given that Justice decided to provide the Applicant with full access to records numbered 26 and attachment, and 122, the issue related to these records is now moot. Therefore, the only issue left for me to decide in this Inquiry is as follows.

1. *Is the Department of Justice required by subsection 25 (1) of the ATIPP Act to refuse the applicant access to the part of record #103 that was separated or obliterated from the record?*

## **VI BURDEN OF PROOF**

[23] Paragraph 54 (1)(a) establishes the burden of proof on the parties in this Inquiry.

*54 (1) In a review resulting from a request under section 48, it is up to the public body to prove*

*(a) that the applicant has no right of access to the record...*

## **VII DISCUSSION OF ISSUE**

### Submissions of the Parties

[24] In its original submissions, Justice submitted the following in support of its position that subsection 25 (1) applies to the information separated or obliterated from record # 103.

*The telephone numbers in records 103...were severed because I felt that they (a) fit the definition of personal information as set out in section 3 (1) of the ATIPP Act, and (b) that their disclosure would be an invasion of third party privacy under section 25 (1) of the Act...I believe that this information fits the criteria set out in para. 25 (2)(i) of the Act. Furthermore, I had no cause to use*

*any of the exceptions stated in paragraphs 25 (3)(a) through (j) or 25 (4)(a) through (g) which would permit the disclosure of the severed information.*

*...the telephone number on record #103 was not provided to [the Applicant] in Court and I maintain my decision to sever it as an unreasonable invasion of the third party's personal privacy under ss 25 (1) of the Act...I severed this information because I assumed that (a) the bidder did not supply this number in his bid because he did not mean for it to become public and (b) that [if the Applicant] could contact the bidder she could do so using the phone number that was provided in Court...para 25 (2) (i) is an obvious fit.*

[25] The Applicant's initial submissions on the application of subsection 25 (1) centre on her inability to discharge what she perceived was her burden of proof under subsection 54 (2) based on the finding in *Branigan v. Commissioner of the Yukon Territory*, 2004, 2004 YKSC 79 (CanLII) (Branigan). She submitted that due to the difficulty of discharging the burden of proof on an applicant under paragraph 54 (2)(a) the burden of proof for this matter should be on Justice under paragraph 54 (1)(a) to prove she has no right of access to the information.

[26] In *Branigan*, Gower, J. determined that "in an appeal "of a decision [by the IP Commissioner] to *give* an applicant access" to parts of that information, if that information is "personal information" of the [third party]", then paragraph 54 (2)(a) applies to place the burden of proof on the Applicant to prove that disclosure of the personal information to the Applicant would not be an unreasonable invasion of personal privacy.<sup>3</sup>

[27] The burden of proof in this case is on Justice given that this review is of Justice's decision that the Applicant has no right of access to the personal information in record #103. This case does not involve a review of Justice's decision<sup>4</sup>

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<sup>3</sup> At para. 32.

<sup>4</sup> A decision of this nature would generally arise when a public body has consulted a third party about the disclosure of their personal information and after receiving submission from the third party, the public body must decide whether to disclose the information. If the public body decides to disclose the personal information, the third party can request that the IPC review that decision.

to give the applicant access to the record which is precondition to the burden shifting to the applicant as set out in subsection 54 (2) which states as follows.

*... in a review of a decision to give an applicant access to all or part of a record containing information that relates to a third party,*

*(a) if the information is personal information, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy;*

[28] In her reply submissions, the Applicant stated the following in respect of being denied access to the information under subsection 25 (1) that was separated or obliterated from # 103.

28. *We agree that a name and phone number are to be considered personal information as per s. 3 (a) of the Act but disagree that in this case the disclosure would be an unreasonable invasion of the third party's personal privacy as claimed by the Public Body. [Emphasis in original]*

29. *In support of their position the Public Body relies on s. 25 (2)(i) which states that if the information is to be used for mailing lists or solicitations by telephone or other means. The common meaning of solicitations is "a person whose job involves" talking to many people and trying to persuade them to buy things, donate money, etc." There is no evidence that the Applicants would use the information for that purpose and it follows that this section does not apply. [Emphasis in original]*

30. *The Public Body misconstrued the application of s. 25 (4) by stating that it "had no cause to use any of the exceptions stated in paragraphs 25(4)(a) through [sic] (g)" implying that the Public Body has discretion which it has not.*

31. *The Public Body did not take all the relevant circumstances in consideration, as required by s. 25(4), when making the decision not to disclose personal information. In this case the personal information has been supplied voluntarily by members of the public that choose to participate in a bidding process advertised by the Sheriff's office in Yukon News...Furthermore, since execution proceedings are public none of the*

*bidders can expect that their personal information supplied with their bids will be kept confidential.*

32. *The Applicants submits that s. 25 (4)(e) and (f) apply in this case. In support of that position we rely on s. 60 of the Judicature Act, ss. 26, 38 or the Execution Act and s. 122 (1) of the Land Titles Act. When reading all the sections in conjunction it becomes clear that execution proceedings involving the sale of land are time sensitive and of serious nature. It follows that personal information by which bidders can be identified is necessary and not to be considered an unreasonable invasion of personal privacy of a third party.*

37. *The Applicants disagree with the reasons of the Public Body involving record #103. We reiterate our position as outlined in para. 29 above dealing with s. 25(2)(i). Further there is no evidence that the bidder provided the phone number to the Sheriff's office in confidence. In consequence there is no basis to support the assumption of the Public Body as stated under (a). It is more likely that the Sheriff's office was unable to reach the bidder through the phone number provided in the bid and it is therefore unreasonable to assume the Applicants would be able to contact the bidder using the same phone number.*

[29] From its additional submissions as requested, Justice stated the following about why the information that was separated or obliterated from record #103 is personal information and how subsection 25 (1) applies to this information.

[1] *Subsection 3 (a) of the ATIPP Act defines "personal information" as recorded information about an identifiable individual, including (a) the individual's name, address, or telephone number.*

[2] *The seven digit number supplied to the Sherriff's office is a telephone number. This number appears under the name, [bidder name], on records #103.*

[3] *...*

[4] *The Public Body has confirmed that the number does not appear in the telephone directory under [the bidder's] name, nor does it appear in the reverse directory. In other words, it is not routinely disclosed and*

*publicly available and not merely business contact information, such as the kind normally found on a business card.*

- [5] *The Public Body called the number and confirmed that this number belongs to [the bidder], and that this is his personal (home) telephone number.*
- [6] *The seven-digit number is about an identifiable individual, as set out in section 3 (a) of the Act.*
- [7] *Subsection 25 (1) of the ATIPP Act is a mandatory exception to the Applicant's right of access. Subsection 25 (1) requires the Public Body to refuse to release personal information to the Applicant where it determines that to do so would constitute an unreasonable invasion of personal privacy.*
- [8] *As this is a mandatory exception the Public Body must err on the side of caution if it is uncertain whether disclosure of personal information would constitute an unreasonable invasion of third party personal privacy and withhold the information unless the Information and Privacy Commissioner decides otherwise on any questions of fact and law arising in the course of inquiry...*
- [9] *Subsection 25 (3), paragraphs (a) through (j) provide for circumstances when a release of third party personal information is not an unreasonable invasion of personal privacy.*
- [10] *[The bidder] has not, in writing or otherwise, consented or requested the disclosure as set out in paragraph 25 (3)(a).*
- [11] *The Public Body was unable to identify any compelling circumstances in which disclosure of the number could affect anyone's health or safety as set out in paragraph 25 (3)(b).*
- [12] *The Public Body maintains that there is no enactment of Yukon or Canada which would authorize the disclosure of this information as set out in paragraph 25 (3)(c).*
- [13] *The disclosure is not for research or statistical purposes in accordance with [sic] as set out in paragraph 25 (3)(d).*

- [14] *The information is clearly not about [the bidder's] position, functions, or salary range as an officer, employee or member of a public body or as a member of a Minister's staff as set out in paragraph 25 (3)(d).*
- [15] *The disclosure would not reveal financial and other details of a contract to supply goods or services to a public body as set out in paragraph 25 (3)(f).*
- [16] *The information is not a description of property and its assessment under the Assessment and Taxation Act as set out in paragraph 25 (3)(g).*
- [17] *The information is not about expenses incurred by a third party while travelling at the expense of the public body, as set out in paragraph 25 (3)(h).*
- [18] *The disclosure does not reveal details of a licence, permit, or other similar discretionary benefit granted to the third party by a public body as set out in paragraph 25 (3)(j).*
- [19] *The disclosure would not reveal details of a discretionary benefit of a financial nature granted to the third party by a public body, as set out in paragraph 25 (3)(j).*
- [20] *Subsection 25 (4) sets out a non-exhaustive list of circumstances which a Public Body is required to consider before deciding that the release of the personal information would constitute an unreasonable invasion of a third party's personal privacy.*
- [21] *The number was not supplied in [the bidder's] bid. The only place it appears is in a hand-written note in the Sheriff's file.*
- [22] *The Public Body called the number and asked [the bidder] to confirm that this is his personal telephone number and that he did not wish to have it made public.*
- [23] *The Public Body maintains that the seven-digit number was supplied in confidence, as set out in paragraph 25 (4)(c) of the Act.*

[24] [The bidder] *was not the successful bidder in this proceeding, and therefore this information is not relevant in a determination of the applicant's right as per s. 25 (4)(e) of the Act.*

***Is the information separated or obliterated from record # 103 personal information?***

[30] Justice indicated in its submissions that the personal information separated or obliterated from record # 103 is the phone number of a bidder. On the record, above the telephone number is the bidder's name. It also states on the record "Contacted all Bidder [sic] to advise of change of court date to April 28." Below this statement is "March 31/15" and beside this date is a signature or initials, which I assume to be the author of the record.

[31] "Personal information" is defined in section 3 as recorded information about an identifiable individual. Included among the list of information that meets the definition of personal information is an individual's telephone number. Given that the information is the home telephone number of the bidder and it is contained in record number # 103 along with a name, I find that the information separated or obliterated from record # 103 is the personal information of the bidder.

***Would disclosure of the personal information constitute an unreasonable invasion of the third party's personal privacy?***

[32] Justice is prohibited by subsection 25 (1) from disclosing the personal information to the Applicant if disclosure of the information would constitute an unreasonable invasion of a third party's personal privacy.

[33] Subsection 25 (2) creates a rebuttable presumption about when the disclosure of personal information about a third party is presumed to be an unreasonable invasion of personal privacy.

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

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

*(b) the personal information was compiled and is identifiable as part of an investigation into or an assessment of what to do about, a*

*possible violation of law or a legal obligation, except to the extent that disclosure is necessary to prosecute the violation or to enforce the legal obligation or to continue the investigation;*

*(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels;*

*(d) the personal information relates to the third party's employment or educational history;*

*(e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax;*

*(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;*

*(g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;*

*(h) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations; or*

*(i) the personal information consists of the third party's name together with the third party's address or telephone number and is to be used for mailing lists or solicitations by telephone or other means.*

[34] Subsection 25 (3) identifies a number of circumstances in which disclosure of a third party's personal information would not be an unreasonable invasion of the third party's personal privacy.

*(3) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*

*(a) the third party has, in writing, consented to or requested the disclosure;*

*(b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party;*

*(c) an enactment of the Yukon or Canada authorizes the disclosure;*

*(d) the disclosure is for a research or statistical purpose in accordance with section 38;*

*(e) the information is about the third party's position, functions or salary range as an officer, employee or member of a public body or as a member of a Minister's staff;*

*(f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;*

*(g) the information is a description of property and its assessment under the Assessment and Taxation Act;*

*(h) the information is about expenses incurred by the third party while travelling at the expense of a public body;*

*(i) the disclosure reveals details of a licence, permit, or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit; or*

*(j) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, not including personal information that is supplied in support of the application for the benefit or is referred to in paragraph(3)(c).*

[35] Subsection 25 (4) sets out what Justice must, at minimum, consider before deciding, based on the presumption under subsection (2) or otherwise, that the disclosure of the personal information would constitute an unreasonable invasion of a third party's personal privacy.

*(4) Before refusing to disclose personal information under this section, a public body must consider all the relevant circumstances, including whether*

- (a) the third party will be exposed unfairly to financial or other harm;*
- (b) the personal information is unlikely to be accurate or reliable;*
- (c) the personal information has been supplied in confidence;*
- (d) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant;*
- (e) the personal information is relevant to a fair determination of the applicant's rights;*
- (f) the disclosure is desirable for the purpose of subjecting the activities of the Government of the Yukon or a public body to public scrutiny; or*
- (g) the disclosure is likely to promote public health and safety.*

[36] I will begin with subsection 25 (3) because if any of these paragraphs in this subsection apply to the telephone number, I need not go on to consider the other subsections of section 25.

[37] Justice submitted that none of the provisions in subsection 25 (3) apply to the personal information. The Applicant did not provide any evidence that any of these provisions apply. I agree with Justice that none of the provisions in subsection 25 (3) apply to the personal information and find they do not.

[38] I will now determine whether any provisions in subsection 25 (2) apply to the personal information.

[39] Justice submitted that paragraph 25 (2)(i) applies for the following reasons.

*I felt that... their disclosure would be an invasion of third party privacy under section 25 (1) of the Act...I believe that this information fits the criteria set out in para. 25 (2)(i) of the Act.*

*...the telephone number on record #103 was not provided to [the Applicant] in Court and I maintain my decision to sever it as an unreasonable invasion of the third party's personal privacy under ss 25 (1) of the Act...I severed this information because I assumed that (a) the bidder did not supply this number in his bid because he did not*

*mean for it to become public and (b) that [the Applicant] could contact the bidder she could do so using the phone number that was provided in Court...para 25 (2) (i) is an obvious fit.*

[40] After defining “solicitations” in paragraph 25 (2)(i) as “a person whose job involves talking to many people and trying to persuade them to buy things, donate money, etc.” the Applicant submitted she would not use the personal information for the purpose of solicitation and indicated there is no evidence to support this use.

[41] Paragraph 22 (3)(j) in British Columbia’s (BC) *Freedom of Information and Protection of Privacy Act* (FIPPA) is the same as our paragraph 25 (2)(i). When interpreting the meaning of “solicitation” in BC FIPPA, former Commissioner Loukidelis stated the following.

*In my view, solicitation for the purposes of s. 22(3)(j) generally will involve an approach to someone in order to enlist that person’s support for something or in order to sell something to that person. See Order 02-20, [2002] B.C.I.P.C.D. No. 20, for example, where an applicant’s intended solicitation of donations, and other forms of support, for a political cause triggered s. 22(3)(j).<sup>5</sup>*

Commissioner Loukidelis found that approaching individuals to obtain genealogical information would not be solicitation under BC FIPPA paragraph 22 (3)(j).

[42] Justice has not provided any evidence to support that the Applicant would use the information to approach to bidder in order to enlist his support for something and I find nothing in the evidence presented by the Applicant that would establish this use. Consequently, I find that paragraph 23 (2)(i) does not apply to the telephone number. I also find that no other provision in subsection 23 (2) applies to the personal information.

[43] Before I decide whether subsection 25 (1) applies to the bidder’s telephone number, I must consider all relevant circumstances, including those under subsection 25 (4), in order to determine whether there are circumstances that weigh for or against disclosure of the telephone number.

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<sup>5</sup> Order 02-27, Public Guardian and Trustee of British Columbia, Office of the Information & Privacy Commissioner for British Columbia, [2002] B.C.I.P.C.D. No. 27, at para 17.

*(a) the third party will be exposed unfairly to financial or other harm*

[44] No evidence has been provided by the parties to indicate that the bidder would be exposed unfairly to financial or other harm and on the evidence I do not find this to be the case. As such, this circumstance does not apply and is neutral.

*(b) the personal information is unlikely to be accurate or reliable.*

[45] Justice confirmed the telephone number is the bidder's home telephone number. As such, it cannot be said that the personal information is not accurate or unreliable. Consequently, this circumstance does not apply and is neutral.

*(c) The personal information has been supplied in confidence*

[46] Justice submitted that the bidder's telephone number was supplied in confidence. It does not, however, provide any evidence to support that when the telephone number was supplied by the bidder that it was done so in confidence and I find there is none. As such, this circumstance does not apply and is neutral.

*(d) The disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.*

[47] No submissions were received from either party on this factor and I find that there is no evidence to support that this factor would apply. I therefore find this circumstance does not apply and is neutral.

*(e) The personal information is relevant to a fair determination of the applicant's rights*

[48] Of the submission received from the parties, there is no evidence to support that the bidder's telephone number contained in record number # 103 is "relevant" to a fair determination of the applicant's rights. Again, this circumstance does not apply and is neutral.

*(f) the disclosure is desirable for the purpose of subjecting the activities of the Government of the Yukon or a public body to public scrutiny.*

[49] No evidence was provided that would support that it is desirable to disclose the bidder's telephone number to the Applicant for the purpose of subjecting the

activities of Justice to public scrutiny. As such, this circumstance does not apply and is neutral.

[50] Another circumstance I must consider is that the bidder did not provide his home telephone number in his bid, which suggests he did not intend for it to be disclosed publicly through the court process.

[51] As previously indicated, the bidder's home telephone number is handwritten on a piece of paper below the bidder's name which appears to have been used by Justice to contact the bidder about a change in court date. Justice submitted that it confirmed directly with the bidder that this telephone number is his home telephone number.

[52] In the submissions provided by the Applicant is an Affidavit of the Deputy Sherriff. Appended to this Affidavit is a copy of each of the bids. The Applicant indicates in her submission that the phone number appearing in the bidder's bid is not his home telephone number.

[53] Justice did not indicate how it came to be in possession of the bidder's home telephone number. However, this evidence is unnecessary as the facts support that the bidder intentionally did not provide his home telephone number in the public bid, likely to avoid it becoming public. This factor, in my view, weighs in favour of non-disclosure of the telephone number to the Applicant.

[54] After considering all the relevant factors, on balance, I find that disclosure of the bidder's telephone number in record # 103 would be an unreasonable invasion of the bidder's personal privacy. Consequently, I find that subsection 25 (1) prevents Justice from disclosing the personal information in record number # 103 to the Applicant.

## **VIII FINDINGS**

[55] On the issue in this Inquiry, I find that Justice is required by subsection 25 (1) of the ATIPP Act to refuse the Applicant access to the part of record # 103 that was separated or obliterated from the record.

## **IX RECOMMENDATION**

[56] Given my findings, I have no recommendations for Justice. In accordance with subparagraph 57 (2)(b)(i), I affirm that Justice should continue to refuse the Applicant access to the information separated or obliterated from record # 103.

## **XI APPLICANT'S RIGHT OF APPEAL**

[57] Subsection 59 (1)(b) gives the Applicant the right to appeal to the Yukon Supreme Court when a determination is made under section 57 that the Public Body is required to refuse to give access to part of the record.

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Diane McLeod-McKay, B.A., J.D.  
Information and Privacy Commissioner

### Distribution List:

- Public Body
- Applicant
- Records Manager