



Yukon  
Information  
and Privacy  
Commissioner

**INQUIRY REPORT**

**File ATP20-07R**

**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)**

**Department of Environment**

**October 6, 2021**

## Summary

In November of 2019, an applicant made a request to the Department of Environment (Department) for access to “[a]ll collar relocation data (GPS, VHF or Satellite Collar), in entirety, for musk ox. This data may span 1980 to present. This should include collar fix data for any musk ox that was collared in Yukon and should include data that spans over the herd's entire range, including transboundary data...” as well as “all transmissions and attempted transmissions, even if data were not obtained...” for the period between January 1, 1980, to the present. The Department refused the Applicant’s access request in full, citing subsection 21 (b) (disclosure harmful to the conservation of species, etc.) as its authority for refusal. The Applicant requested that the Information and Privacy Commissioner (IPC) review the refusal. Settlement of the review failed, and the matter went to Inquiry.

The IPC found that the Department is not authorized to rely on subsection 21 (b) to refuse to disclose the information sought by the Applicant and recommended that it provide the Applicant with access to the information to which they are entitled.



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## Statutes Cited

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

*Access to Information and Protection of Privacy Act*, SY 2018, c.9

## Cases Cited

### Information and Privacy Commissioners

Inquiry Report ATP20-06, Department of Environment, March 22, 2021 (YT IPC)

## Explanatory Note

All sections, subsections, paragraphs and the like referenced in this Inquiry Report are to the (now repealed) *Access to Information and Protection of Privacy Act*, RSY 2002, c.1 (ATIPP Act) unless otherwise stated.

## I BACKGROUND

[1] On November 25, 2019, the Applicant requested the following information from the Department of Environment (Department).

*All collar relocation data (GPS, VHF or Satellite Collar), in entirety, for musk ox. This data may span 1980 to present. This should include collar fix data for any musk ox that was collared in Yukon and should include data that spans over the herd's entire range, including transboundary data. The information is contained by the Department of Environment in two to four excel spreadsheets; in two to four excel workbooks. I am requesting these spreadsheets in full. Fulfillment of this request should include any data that was provided from the collar through Argos, Iridium or other remote transmission, as well as through manual download. This information should include, but not be limited to ARGOS\_LOC\_ID, SAMPLED\_ANIMAL\_ID, VEG, BUFF ID, PROGRAM, PTT\_ID, MUSKCOX ID, SEX, DATE\_YEAR, YUKON TIME, YT DATE TIME, CODE, LATITUDE, DEG\_E, BEST NOM, PASSES, SATEWTE, LONGITUDE, MONTH DAY, SEAS\_NUM, CONSEC\_SEA, SEASON\_NAM, SEASON, TEMP, STUDY\_WEEK, WEEK\_NAME, UNK 1, FREQ, DAY, HEARD, TIME HEARD, UNK 2, SEN 1, SEN 2, SENSOR, SEN 4, SEN 5, NO\_DATA, ICE\_OR\_SNO, CLEAR\_WATE, SILTY WATE, AQUATIC\_TU, CLOUD\_OR\_C, WET\_TUNDRA, WET\_GRAMMI, WET\_PARTIA, MOIST\_WET\_, MOIST\_GRAM, COTTONGRAS, LOW\_SHRUB\_, SHRUB\_THIC, DRY\_DRYAS\_, DRY\_TUNDRA, ROWSUM\_VAL, No Data, % Ice or Snow, " Clear Water, % Slity Water, % Aquatic Tundra, % Wet Tundra, " Wet Gramminoid/Low Shrub, % Wet Partially Vegetated, " Moist/Wet Tundra Complex, " Moist Gramminoid Non-Tussock Tundra, % Cottongrass Tussock Tundra, % Low Shrub Tundra, " Shrub Thicket, " Dry Dryas Tundra, % Dry Tundra, " Cloud or Cloud Shadow, " RowSum\_Value\_%'s. Depending on the collar*

*model, the fields may also be similar to: POPULATION, LOC\_ID, ANIMAL\_ID, ANIMALNUM, YEAR, DATE\_YT, TIME\_YT, HOUR, DATE\_TEXT, YR\_MONTH, MONTH\_NUM, MNTHTNAME, WEEK\_NUM, SERIALDAY, DAY NUM, FUNCTION, Best Daily Location, LATITUDE, LONGITUDE. Please provide record of all transmissions and attempted transmissions, even if data were not obtained. If other fields are available, please include those in this Information request. I am requesting the Information In electronic format (e.g., the excel spreadsheet) Timeline: January 1, 1980 to present*

[2] The Records Manager activated the request and assigned it file number #A-8077 (Access Request).

[3] On December 17, 2019, the Records Manager responded to the Access Request and advised the Applicant that the Department had refused access to the records in full. The Department cited the following provisions as its authority to refuse access to the information:

- 17 (1)(a) and (b);
- 20 (1)(a)(i),(ii),(iii),(iv), and (b);
- 21 (b); and
- 24 (1)(a)(i)(ii), (b), and (c)(ii)(iii).<sup>1</sup>

[4] On January 10, 2020, the Information and Privacy Commissioner (IPC) received a request for review (RFR) from the Applicant. The IPC authorized settlement under section 51 of the ATIPP Act.<sup>2</sup>

[5] Because the Records were refused in full, it was unclear which exceptions applied to the information in the Records, or if all the cited provisions applied to all of the information.<sup>3</sup>

[6] During an initial in-person meeting on January 27, 2020, the Investigator assigned to attempt settlement of the matter under review, told the Department that to proceed with a review, it would be necessary for it to clarify which provision(s) apply to which information.

[7] On March 2, 2020, the Department confirmed it was withdrawing its application of subsections 17 (1), 20 (1) and 24 (1), and would be relying solely on subsection 21 (b) to refuse access to the Records.<sup>4</sup>

[8] Settlement of the RFR could not be achieved and the IPC decided to conduct an Inquiry.

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<sup>1</sup> Settlement Fact Report, dated April 16, 2020.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

## II INQUIRY PROCESS

[9] The Notice of Inquiry was delivered to the parties on May 5, 2020, wherein the issue for Inquiry was set out. Each party made submissions regarding the issue. All submissions were received by the parties and exchanged by the deadline of June 19, 2020.

## III ATIPPA BROUGHT INTO FORCE

On April 1, 2021, the new *Access to Information and Protection of Privacy Act*, SY 2018, c.9. (ATIPPA) was brought into force and the old ATIPP Act was repealed. Section 130 of the ATIPPA states as follows.

*130(1) The commissioner must, without delay after the coming into force of this section, take one of the actions under subsection (2) if*

*(a) the commissioner had received a request for a review made under subsection 48(1), (2) or (4) of the former Act, or a request for a review of a complaint made under subsection 48(3) of the former Act, before the coming into force of this section; and*

*(b) the commissioner had not, as of the day on which this section came into force, commenced the review, by means of an inquiry or investigation.*

*(2) The actions for the purpose of subsection (1) are the following:*

*(a) to conduct a review by means of an inquiry of the request for a review or an investigation of the complaint as if the former Act had not been repealed;*

*(b) to treat the request made under the former Act as if it had been filed under section 90 of this Act on the day on which section 90 came into force...*

*(3) The former Act (including the requirement for a decision by a public body under subsection 58(1) of the former Act and any appeal to the Court under subsection 59(1) of the former Act) applies as if it had not been repealed in respect of a review of a request or complaint made under the former Act if the commissioner has not concluded the review by means of an inquiry or investigation on or before the day immediately before the coming into force of this section.*

*(4)...*

[10] As I had received the Applicant's RFR of the Department's decision on Access Request #8077 from the Applicant on January 10, 2020, commenced an Inquiry into the matter on May

5, 2020, and had not concluded the Inquiry before the new ATIPPA went into effect on April 1, 2021, the old ATIPP Act applies to the matter under review.

### III ISSUE

[11] The issue in this Inquiry is as follows.

**Is the Department authorized by subsection 21 (b) of the ATIPP Act to refuse access to the information sought by the Applicant in their Access Request?**

### V RECORDS AT ISSUE

[12] The Department did not provide me with a copy of the records requested by the Applicant. What it provided were samples of the records containing fields of the information associated with collared muskox.

[13] The rationale for providing the sample is contained in the Fact Report. It states “[t]he Records at issue are spreadsheets stored in multiple databases within the Department. The information is stored using ‘Microsoft Access’ a database management tool similar to excel, designed to store information for reference, reporting, and analysis. Because the responsive records consist of millions of data points stored in multiple databases, the Department provided a sample of the database ‘headers’ for the review, as opposed to providing the records in full...”

[14] A sample of the records is contained in the Fact Report. The same sample appears in the Department’s submissions in Appendix D. However, Appendix D contains a second sample.

[15] The sample in both the Fact Report and Appendix D is a table entitled “MUSKOX\_ARGOS\_RELOCATION”. A note above this table says that ‘Argos’ in the top tab (i.e., table name) does not indicate the data in the table is from Argos equipment. It is a relic from the database set-up”. This table contains three columns. The first is ‘Field Name’ and contains numerous fields that identify the kind of information collected about collared muskox. An example of this information is animal ID, sex, latitude, and longitude. The second column is ‘Data Type’. This column contains information collected from the collar of each collared muskox. For example, it would contain each muskox’s animal ID, their sex, and their latitude and longitude. The third column is ‘Description (optional)’. In the sample provided, this column appears to provide the parameters of the information that is entered in column two.

[16] The second sample, provided only in Appendix D, is a table identified as “AllMu 1993 to 2005 FINAL BEST for Aview.xls”. It contains 15 columns. They are labeled as “MUSKOX ID, SEX, DATE, YUKON TIME, CODE, LATTITUDE, LONGITUDE, YEAR, MONTH, DAY, SEAS\_NUM, CONSEC\_SEA, SEASON\_NAM, SEASON, STUDY\_WEEK”.

[17] The substance of the Applicant’s Access Request is that they want “[a]ll collar relocation data (GPS, VHF or Satellite Collar), in entirety, for musk ox” that is in the custody or control of the Department, including a “record of all transmissions and attempted transmissions, even if data were not obtained”, for the period between January 1, 1980, to the present, which would be November 25, 2019, the date of the Access Request. To clarify, they indicate that the information is contained in “two to four excel workbooks” and that they want access to the spreadsheets ‘in full’. They add that “[f]ulfillment of this request should include any data that was provided from the collar through Argos, Iridium or other remote transmission, as well as through manual download”.

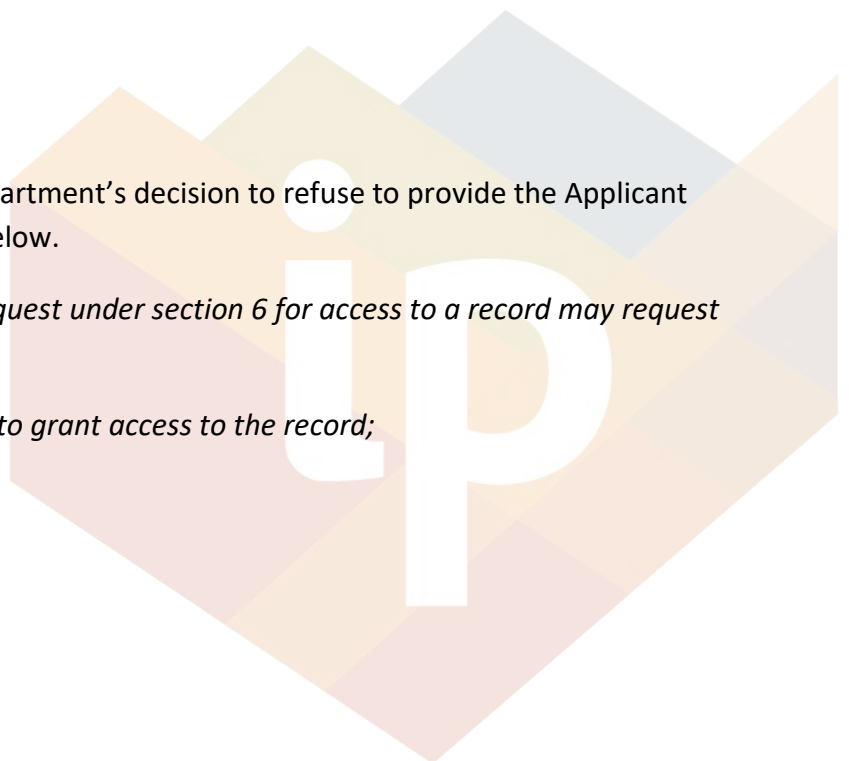
[18] I assume that the samples provided in Appendix D comprise the information that is responsive to the Applicant’s Access Request and that the information described in paragraphs 15 and 16 of this Inquiry Report is the extent of the information that the Applicant would receive if they were to receive all information requested in their Access Request. The Applicant received a copy of both the Fact Sheet and Appendix D and did not raise an objection to the data presented in the samples as it pertains to their Access Request. Given this, I find that the records at issue in this Inquiry are comprised of the information requested by the Applicant that would be provided in the format of the sample tables as described by the Department in Appendix D (Records).

## VI JURISDICTION

[19] My authority to review the Department’s decision to refuse to provide the Applicant with access to the Records is set out below.

*48(1) A person who makes a request under section 6 for access to a record may request the commissioner to review*

*(a) a refusal by the public body to grant access to the record;*





## VII BURDEN OF PROOF

[20] Paragraph 54 (1)(a) sets out the burden of proof relevant to this Inquiry and identifies that the burden is on the Department to prove that the Applicant has no right of access to the Records.

*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 ...*

## VIII SUBMISSION OF THE PARTIES

[21] The Department indicated the following in its submissions.

*In response to your Notice of Inquiry dated May 5, 2020, about the Department of Environment's decision to refuse access to information responsive to ATIPP Request A-8077, the Department of Environment is providing revised exceptions and further rationale for the refusal. Enclosed is the list of data headings for the databases in which the responsive information is held. Enclosed also are documents supporting the following:*

### **Section 21**

- *Muskox have S1S2 – Critically Imperiled/Imperiled status in Yukon under NatureServe classification. See page 3 of Appendix A (NatureServe report).*
- *The Framework for the Management of Yukon North Slope Muskox details management and conservation goals and strategies agreed upon by Environment Yukon, Parks Canada, the Wildlife Management Advisory Council (North Slope) and the Aklavik Hunters and Trappers Committee. The Framework identifies an appropriate harvest of 3% for the North Slope population. See page 8 of Appendix B (the Framework).*
- *Previous communication has indicated interest in increasing harvest of North Slope Muskox. See Appendix C ("FW Muskox harvest on N.Slope.).*
- *Muskox are sedentary and repeatedly use the same areas through time. See page 4 Appendix A; page 9 of Appendix B.*

- *All indications from community organizations (e.g., Renewable Resource Councils, Hunters and Trappers Committee) is that the 3% harvest is currently being met, meaning any further harvest can not [sic] be supported while still meeting the definition of “conservation” as outlined in the Inuvialuit Final Agreement and as described in the Framework. The Government of Yukon’s partners in Alaska who have a similar sized population have not allowed any harvest when abundance of muskox there are less than 300, just under what is found in Yukon at this time. See page 7 of Appendix B.*

*We therefore refuse access in full pursuant to **section 21(b)** of the ATIPP Act. [Bolding in original]*

[22] The Applicant’s submissions submitted in reply are extensive. I will address them as they are relevant to my analysis of the Issue.

## IX ANALYSIS OF THE ISSUE

[23] The Department is relying on subsection 21 (b) as its authority to refuse the Applicant access to the Records. The provision states as follows.

*21 A public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to result in damage to, or interfere with the conservation of*

*(b) a species of plants, animals or invertebrates that is endangered, threatened or vulnerable in the Yukon or in any one or more regions of the Yukon;*

[24] In Inquiry Report ATP20-06R, I interpreted the meaning of this provision as follows.

*For section 21 to apply, there must be species of animals that is endangered, threatened or vulnerable in the Yukon or in any one or more regions in the Yukon. Subsection 21 (b) does not specify who is responsible for determining if an animal species is endangered, threatened or vulnerable.<sup>5</sup>*

*The terms ‘endangered, threatened or vulnerable’ are qualified in subsection 21 (1) by the species that they refer to; in this case, ‘animals’. They are further qualified by the words “reasonably be expected to result in [probable] damage to, or interfere with the conservation of” in section 21. Taken together, these provisions exist to protect against damage to or interference with the conservation of species that are endangered,*

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<sup>5</sup> Inquiry Report ATP20-06, Department of Environment, March 22, 2021 (YT IPC), at para. 109.

*threatened or vulnerable, where it is probable that the damage or interference will occur because information about them is disclosed to an applicant.*<sup>6</sup>

*The conservation of animal species is a specialized field. It is within this field that animals are classified as endangered, threatened, vulnerable, or otherwise. Based on my review of the evidence, it appears that the classification of an animal species drives conservation efforts. As such, it is within this field that these terms must be defined.*<sup>7</sup>

[25] I defined the meaning of the terms ‘endangered, threatened or vulnerable’ as follows.

‘Endangered’ means an animal species facing imminent extirpation or extinction.<sup>8</sup>

‘Threatened’ means an animal species that is likely to become endangered if nothing is done to reverse the factors leading to its extirpation or extinction.<sup>9</sup>

‘Vulnerable’ means an animal species that may become threatened or endangered because of a combination of biological characteristics and identified threats.<sup>10</sup>

[26] I also found that the inclusion of the words “in the Yukon or any one or more regions of the Yukon” to “limit[] the applicability of the exception to information in the custody or control of a public body that is about species found in the Yukon. For animal species, it would be those species whose habitat includes lands within the geographical bounds of the Yukon. The provision would not apply to information in the custody or control of a public body that is about a species ‘endangered, threatened or vulnerable’ beyond those boundaries”.<sup>11</sup>

[27] Muskox are a species of animal.

***Are muskox ‘endangered, threatened or vulnerable’ in the Yukon or in any one or more regions of the Yukon?***

[28] In Inquiry Report ATP20-06R, I found that a determination by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) that an animal species classified by them as endangered, threatened or a species of special concern would suffice to meet this part of the subsection 21 (b) test. I further determined that the classification of a species at risk under the

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<sup>6</sup> *Ibid.*, at para. 118.

<sup>7</sup> *Ibid.*, at para. 119.

<sup>8</sup> *Ibid.*, at para. 134.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, at para. 136.

<sup>11</sup> *Ibid.*, at para. 137.

Federal *Species at Risk Act* (SARA)<sup>12</sup> would also suffice, as would a designation of an animal as specially protected wildlife under the Yukon's *Wildlife Act*<sup>13</sup> and *Wildlife Regulation*.<sup>14 15</sup>

[29] Muskox are not defined by COSEWIC as endangered, threatened or a species of special concern. They are not defined as a species at risk under SARA, and they are not among the animals listed in the *Wildlife Regulation* as specially protected wildlife.

[30] The Department's submission on this part of the test is that muskox have an "S1S2 – Critically Imperilled/Imperilled status in Yukon under NatureServe classification". As evidence, the Department included in its submission at Appendix A, a result from NatureServe Explorer that shows on a map of Canada that these animals are classified in the Yukon as S1 critically imperilled.<sup>16</sup>

[31] In the Applicant's submission, they acknowledge that SARA and the *Wildlife Act* are sources of designating animals at risk. They recognize that there are "other independent, non-government organizations (e.g., NatureServe, CPAWS) that have a ranking system" and which "carries no legal weight and no legal protection".<sup>17</sup> I assume the reference to 'no legal protection' refers to the protection of animals enforceable by law for animals designated by these NGOs as an animal at risk under their respective ranking systems.

[32] Subsection 21 (b) does not specify that for an animal to be endangered, threatened or vulnerable, the designation must be determined in accordance with a federal or territorial law. Given this, it is reasonable to consider species at risk designations from other reputable sources that are recognized by the Yukon government to determine if their designation is equivalent to the meaning of endangered, threatened or vulnerable as provided for herein.

[33] On the NatureServe Canada website, it states the following under the 'Who We Are' link.<sup>18</sup>

*NatureServe Canada provides scientific information about Canada's species and ecosystems to help guide effective conservation action and natural resource management. A part of the international NatureServe network, it is a leading source for reliable information and analysis on the distribution and conservation status of Canada's plants, animals, and ecological communities. NatureServe Canada works in close*

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<sup>12</sup> S.C. 2002, c.29.

<sup>13</sup> RSY 2002, c.229.

<sup>14</sup> O.I.C., 2012/084, as amended.

<sup>15</sup> See discussion about this determination at paras. 123 to 128 and 133 in Inquiry Report ATP20-06R.

<sup>16</sup> Department's submissions, Appendix A, at p. 3.

<sup>17</sup> Applicant's submission, at p. 2.

<sup>18</sup> <https://www.natureserve.org/canada/who-we-are>.

*partnership with key federal and provincial agencies as well as international and multi-lateral initiatives concerned with environmental conservation.*

*NatureServe Canada is a registered charity that functions as a network of provincial and territorial Conservation Data Centres (CDCs) to develop, manage and distribute authoritative information critical to the conservation of Canada's biodiversity. Data held by NatureServe Canada are widely used by federal and provincial agencies, private industry, researchers and conservation organizations to improve the management, use and conservation of biological resources in Canada.*

...

*Our mission is to be the authoritative source for accessible, current, and reliable information on the distribution and abundance of Canada's biological diversity. Through these efforts, we aim to improve decision-making about natural resources and to serve the public by increasing awareness among Canadians of the importance of protecting our nation's rich natural heritage.*

*Member CDCs of the NatureServe Canada Network employ the international NatureServe Natural Heritage Methodology ensuring our biological data is collected, assessed, and managed in a consistent manner and permitting cross-border analyses of our data throughout the Western hemisphere...*

[34] Under the heading 'Organization Structure' on the website it states that:

*NatureServe Canada is a network of nine independent Conservation Data Centres (CDCs) covering all provinces and territories except Quebec. It was established as a national not-for-profit conservation organization in 1999 and is governed by a Board of Directors representing each of its member program CDCs...*<sup>19</sup>

[35] There are nine provinces and territories listed on the webpage as having conservation data centres. Among them is the Yukon Conservation Data Centre with a link to its website that takes one to the Department's website.<sup>20</sup>

[36] I followed the links from the NatureServe Canada website<sup>21</sup> to the North American NatureServe website<sup>22</sup> and then to the NatureServe Explorer webpage<sup>23</sup> where I searched for 'muskox'. A map like the one provided by the Department in Appendix A appeared. The ranking

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<sup>19</sup> *Ibid.*

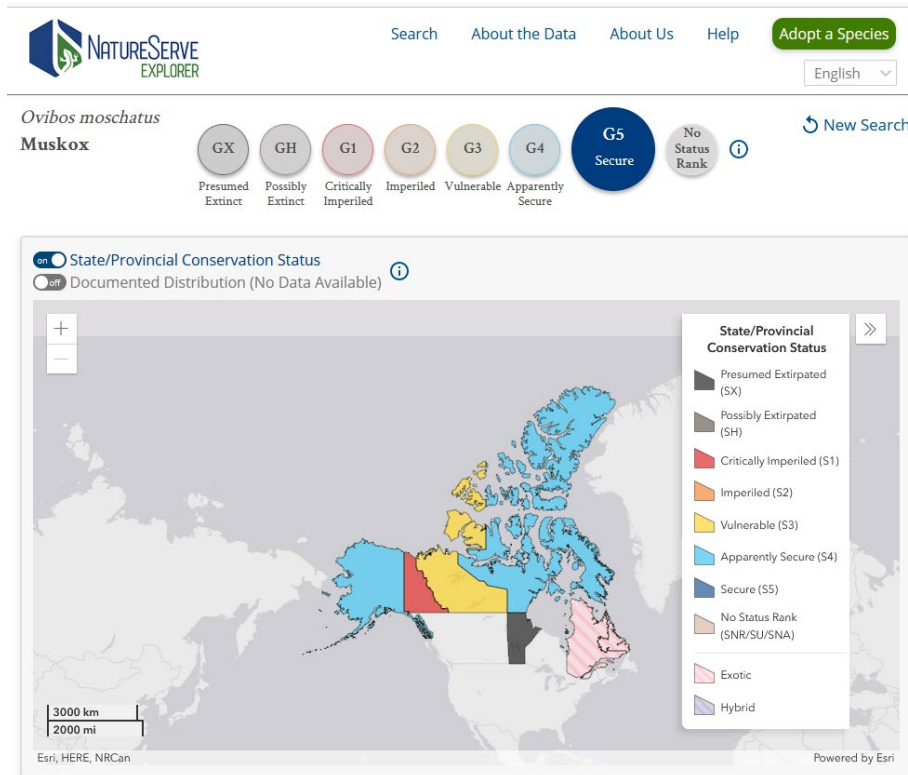
<sup>20</sup> *Ibid.*

<sup>21</sup> <https://www.natureserve.org/canada>.

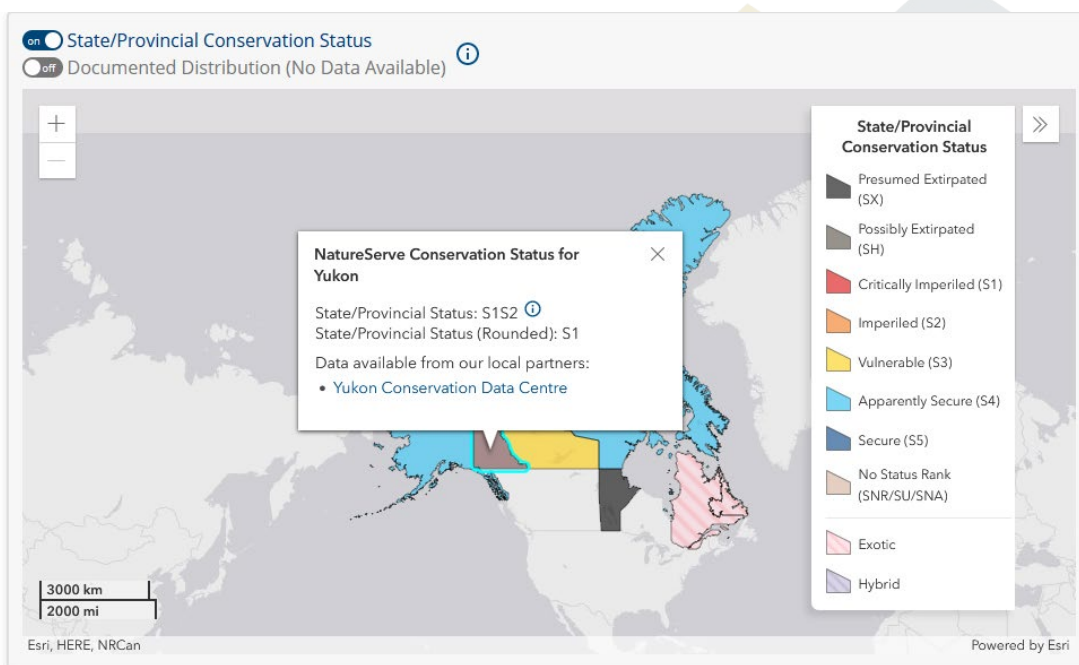
<sup>22</sup> <https://www.natureserve.org/>.

<sup>23</sup> <https://explorer.natureserve.org/>.

for muskox is identified on the map as 'globally secure (G5)' but in the Yukon as 'critically imperilled (S1)'.



[37] When I clicked on the Yukon on the map, information about the status of muskox in the Yukon is displayed as S1 critically imperilled and S2 imperilled that is rounded to S1.





[38] When I scrolled down the webpage, the status shown for the Yukon is 'S1S2'. This is the same ranking that appears in the Department's Appendix A.

[39] I am satisfied from this information that NatureServe is an organization recognized by the Yukon government as a reputable source for ranking the status of animals at risk. As indicated, the status of muskox assigned by NatureServe for the Yukon is 'S1S2', meaning critically imperilled or imperilled.

[40] The meaning of the status ranks used by NatureServe are set out in a table that is located on its website.<sup>24</sup> In the table of the status ranking at the subnational level,<sup>25</sup> the S1 and S2 ratings are defined as follows.

S1 means "**Critically Imperilled** At very high risk of extirpation in the jurisdiction due to very restricted range, very few populations or occurrences, very steep declines, severe threats, or other factors."<sup>26</sup>

S2 means "**Imperilled**— At high risk of extirpation in the jurisdiction due to restricted range, few populations or occurrences, steep declines, severe threats, or other factors."<sup>27</sup>

[Bolding in original]

[41] Based on the ranking of muskox by NatureServe as critically imperilled and imperilled and the meaning of threatened or vulnerable as identified herein, I am satisfied that for the purposes of subsection 21 (b), the muskox population in the Yukon is threatened or vulnerable. I will now go on to assess the remaining part of the test in subsection 21 (b).

***Will disclosure of the information requested by the Applicant result in probable damage to or interference with the conservation of muskox?***

[42] It is not enough that the muskox population is vulnerable or threatened in the Yukon for subsection 21 (b) to apply. The Department must establish, on the balance of probabilities, that disclosure of the information requested by the Applicant in their Access Request could reasonably be expected to result in probable damage to or interference with the conservation of muskox.

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<sup>24</sup>[https://help.natureserve.org/biotics/Content/Record\\_Management/Element\\_Files/Element\\_Tracking/ETRAK\\_D efinitions\\_of\\_Heritage\\_Conservation\\_Status\\_Ranks.htm](https://help.natureserve.org/biotics/Content/Record_Management/Element_Files/Element_Tracking/ETRAK_D efinitions_of_Heritage_Conservation_Status_Ranks.htm).

<sup>25</sup> *Ibid.*, defined as "state or provincial-level jurisdictions (e.g., California, Ontario)".

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

[43] As I indicated in Inquiry Report ATP20-06R, to meet the ‘probable’ part of the subsection 21 (b) test, a public body must provide evidence well beyond or considerably above a mere possibility of harm to reach that middle ground. I added that “this Inquiry is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and inherent probabilities or improbabilities or the seriousness of the allegations or consequences”.<sup>28</sup>

[44] In Inquiry Report ATP20-06R, I also defined the meaning of the term ‘conservation’ to mean “an action, by legal or other means, that is taken to preserve, protect or restore any of the things identified in subsections (a) through (c) of section 21 to promote or enhance the continued existence of that thing”.<sup>29</sup>

[45] As provided for in the Department’s submissions, the basis for its refusal to disclose the information requested by the Applicant is summarized below.

- (a) There is a framework for the management of the Yukon North Slope Muskox (Muskox Management Framework) that details the management, and conservation goals and strategies agreed on by the Department, Parks Canada, the Wildlife Management Advisory Council (North Slope), and the Aklavik Hunters and Trappers Committee.
- (b) The Muskox Management Framework identifies an appropriate harvest of 3% for the North Slope population.
- (c) Previous communication has indicated there is interest in increasing the harvest of North Slope Muskox.
- (d) Muskox are sedentary and repeatedly use the same areas through time.
- (e) Community organizations have indicated that the 3% harvest is currently being met, and that further harvest cannot be supported and still meet the definition of ‘conservation’ as outlined in the Inuvialuit Final Agreement (IFA) and as described in the Muskox Management Framework.

[46] The communication referred to by the Department consists of an email chain of four emails that were written in March of 2015. The first email is from a representative of the Aklavik Hunting and Trapping Committee, an organization based in the Northwest Territories (NWT). In that email, a question is raised about whether Inuvialuit harvesters need a permit to take muskox that are harvested in the Yukon to the NWT. The email also contains this

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<sup>28</sup> *Ibid.*, at paras. 147 and 148.

<sup>29</sup> *Ibid.*, at para. 144.



comment: “[w]e as Inuvialuit harvesters can harvest muskox – and we’re trying to do this harvest as Elders are saying to get rid of the muskox so the caribou can come back”.

[47] The question as to the authority to transport the harvested muskox from the Yukon to the NWT is addressed in another email written by a representative of the government of NWT (GNWT Rep) who copied a Yukon government representative (YG Rep 1) in their response to the email. YG Rep 1 responded to the email and stated the following.

*Like [the GNWT Rep] says, Inuvialuit would not need an export permit to harvest muskox on the Yukon N. slope and transport it to NWT if it is for personal sustenance like a community hunt. Is this intended to be a commercial enterprise or subsistence harvesting for Aklavik/Inuvik? I don't believe there is a provision to allow for commercial harvesting of wildlife in the YT. I have included the regional biologist for this area in this email string as he may have further input.*

[48] This email was copied to another Yukon government representative who responded to the YG Rep 1's email as follows.

*FYI - I'll sort out the question for commercial harvest which I'm quite sure is a no. But I'll check anyway.*

*This issue is obviously coming to a head. We've heard about it more and more since I've been here...in the past year*

*I think I've been asked about this at least half a dozen times. I wonder if there isn't some work looking at interactions or something we can do to help address this issue and ensure harvest remains sustainable? Our next survey is planned for 2016. There has been some work but with the new collars we have we actually can look at interactions between herds and muskox through some proximity sensors.*

[Name of Representative]

*From the Muskox Framework:*

*In 1984, the Inuvialuit Final Agreement established the legal right for Inuvialuit beneficiaries to hunt muskoxen in the Yukon subject to the restrictions of conservation and public safety. Inuvialuit have an exclusive right to harvest muskoxen in Ivvavik National Park and a preferential right to hunt muskoxen on the Yukon North Slope...*

*Because the population is so small, a conservative harvest rate should be used. The harvest rate should be in the range of 1 % to 3 %, bull only. The rate should be lower if cows are also harvested. - Our 2011 estimate (not including the North Richardson Mtns) was 101 muskox. There are likely around 80 or so in the Richardsons, but most of these are on the NWT side. So a harvest of 1-3 bulls would be considered sustainable.*

[49] It is unclear to me from the evidence provided by the Department what its reasons are for refusing the Applicant with access to the information under subsection 21 (b). What I can infer from the evidence is that the Department determined that the comment made in the communication about getting rid of muskox, together with the fact that current harvest levels are at the 3% cap and that muskox are sedentary animals that generally stay within a small range, is enough to meet the subsection 21 (b) test. What I take from the inference is that the Department is of the view that releasing the collared muskox' information, which includes location data, to the Applicant will increase the risk of overharvesting muskox, thereby causing damage to or interfering with their conservation.

[50] In considering what appears to be the Department's view, I reviewed a number of documents and determined that it is highly unlikely that disclosure of the collared muskox information to the Applicant will have the effect of overharvesting muskox. My reasons for this determination follow.

- (a) Muskox are defined as a 'big game' animal in the Yukon's *Wildlife Act*.
- (b) Muskox are not open to licenced hunting in the Yukon.<sup>30</sup>
- (c) There are strong controls under the *Wildlife Act* to deter illegal hunting activity. I discussed these controls at length in Inquiry Report ATP20-06R. I also determined in that report that there are few instances of illegal hunting in the Yukon.<sup>31</sup>
- (d) Muskox are located on the North Slope of the Yukon, which is the farthest northern region of the Yukon. There are no roads or towns in the area.<sup>32</sup> It is "one of the world's most severe environments".<sup>33</sup>
- (e) Under the IFA,<sup>34</sup> the Inuvialuit have the exclusive right to harvest game within the National Park, the Territorial Park and adjacent islands. They also have the preferential right to harvest all species of wildlife (with the same exceptions) on the North Slope of the Yukon. 'Game' is defined in the IFA as "wildlife other than fish, migratory non-game birds and migratory insectivorous birds". The parks are the Ivvavik National Park and the Herschel Island Territorial Park. Both parks are located

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<sup>30</sup> Yukon Hunting Regulations Summary, 2021-22, at p. 51.

<sup>31</sup> *Ibid.*, 5, at paras. 162 and 239.

<sup>32</sup> Yukon North Slope, *The Land and the Legacy*, Taimanga Nunapta Pitqusia, Yukon North Slope Wildlife Conservation and Management Plan Volume 1: Environmental Overview, By the Wildlife Management Advisory Council (North Slope), 1996 (WMAC Vol I), at p. 6.

<sup>33</sup> *Ibid.*, at p. 8.

<sup>34</sup> <https://irc.inuvialuit.com/sites/default/files/Inuvialuit%20Final%20Agreement%202005.pdf>.

- on the North Slope region of the Yukon.<sup>35</sup> The North Slope falls within the Inuvialuit Settlement Region.<sup>36</sup>
- (f) The right to harvest by the Inuvialuit is subject to the laws of general application respecting public safety and conservation. Within their respective jurisdictions, governments are responsible under the IFA to determine harvest quotas. The Wildlife Management Advisory Council (North Slope) is identified as the body responsible for this region to determine the total allowable harvest according to conservation criteria and other relevant factors, and to recommend the quotas to the appropriate minister. They are to also “advise on measures required to protect habitat that is critical for wildlife or harvesting”.<sup>37</sup>
- (g) In the Muskox Management Framework (MMF),<sup>38</sup> it states that as of April 2016, 287 muskox were found on the North Slope.<sup>39</sup> It also states that “[i]n the event the North Slope muskox population remains small, harvest should reflect a conservative harvest range of 1% bulls only, with consideration of a higher percentage (up to 3%) if the population could support that”.<sup>40</sup> I take it from this information and the contents of the email of YG Rep 1, that the allowable harvest rate by the Inuvialuit is between 1% and 3% of the total population, bulls only, and that this amounts to 1 to 3 bulls.
- (h) The location of muskox on the North Slope is publicly known. There is a map of muskox locations in the MMF that shows muskox concentrated in Ivvavik National Park (101) with some in Vuntut National Park and the rest in other locations on the North Slope. This document is published on the Wildlife Management Advisory Council’s website.<sup>41</sup> The Department’s website contains a webpage about muskox. For tourism purposes, it says “[t]he most consistent place to view Muskox is in Ivvavik National Park, particularly along the Firth River to Joe Creek and on the delta”.<sup>42</sup> Muskox are sedentary and seasonal movements range between 50 km and 80 km.<sup>43</sup> In the Species Status Reports for the Yukon North Slope, which is published

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<sup>35</sup> Defined in the Agreement as “all those lands between the jurisdictional boundaries of Alaska and the Yukon Territory and the Northwest Territories, north of the height of land dividing the watersheds of the Porcupine River and the Beaufort Sea, and including the adjacent nearshore and offshore waters and islands.”

<sup>36</sup> <https://wmacns.ca/yukon-north-slope/>.

<sup>37</sup> Inuvialuit Final Agreement.

<sup>38</sup> Department’s submissions, Appendix B.

<sup>39</sup> *Ibid.*, at p. 2.

<sup>40</sup> *Ibid.*, at p. 8.

<sup>41</sup> <https://wmacns.ca/resources/framework-management-north-slope-muskox/>.

<sup>42</sup> <https://yukon.ca/en/muskox>.

<sup>43</sup> [https://explorer.natureserve.org/Taxon/ELEMENT\\_GLOBAL.2.102769/Ovibos\\_moschatus](https://explorer.natureserve.org/Taxon/ELEMENT_GLOBAL.2.102769/Ovibos_moschatus).

on the Wildlife Management Advisory Council's website,<sup>44</sup> it states that muskox are not migratory animals and that they tend to remain in a home range making seasonal movements in the summer that may extend beyond their range but that they usually move back to their home range in the fall.<sup>45</sup> It identifies where most muskox can be found and that muskox are "an important attraction to tourists, photographers, researchers, and of students of wildlife" and that "muskox sightings are enjoyed by Firth River rafting parties and visitors to Ivavik National Park, on Herschel Island Territorial Park, in the Arctic National Wildlife Refuge, and along the Dalton Highway".<sup>46</sup>

- (i) The Inuvialuit have extensive knowledge about the location of muskox. Most Inuvialuit live in communities close to the North Slope and return each year to hunt many animals including caribou.<sup>47</sup> Caribou migrate routinely through the North Slope.<sup>48</sup> The Inuvialuit rely on hunting for food and clothing. The goal of the management plan for the North Slope is to ensure the Inuvialuit will always have the natural resources they need to preserve their traditional customs, which requires careful controls on quantity harvested to ensure there is plenty of fish to catch and animals to hunt.<sup>49</sup> **The Aklavik Hunters and Trappers Committee**, the Inuvialuit Game Council, the Wildlife Management Advisory Council (North Slope), the Fisheries Joint Management Committee, and the federal and territorial governments **work together to manage wildlife and its habitat for the future**.<sup>50</sup> Conservation efforts are informed in part by the extensive knowledge of Inuvialuit of the North Slope region who have inhabited the area for centuries.<sup>51</sup>
- (j) The Wildlife Management Advisory Council is responsible to provide materials to the Aklavik Hunters and Trappers Committee to enable them to effectively review and assess implementation of the Yukon North Slope Wildlife Conservation and Management Plan.<sup>52</sup> The Aklavik Hunters and Trappers Committee has the authority

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<sup>44</sup> Wildlife Management Advisory Council (North Slope), Species Status reports for the Yukon North Slope, July 2012 (WMAC Vol III).

<sup>45</sup> *Ibid.*, at p. 12.

<sup>46</sup> *Ibid.*, at pp. 12 and 13.

<sup>47</sup> WMAC Vol I, at p. 20.

<sup>48</sup> *Ibid.*, at p. 16.

<sup>49</sup> *Ibid.*, at p. 34.

<sup>50</sup> *Ibid.*, at p. 35.

<sup>51</sup> *Ibid.*, at p. 20 and Yukon North Slope, The Land and the Legacy, Taimanga Nunapta Pitqusia, Yukon North Slope Wildlife Conservation and Management Plan, Volume 2: Goals and Actions, Wildlife Management Advisory Council (North Slope) 2003 (WCMP Vol II), at p. 40.

<sup>52</sup> WCMP Vol II, at p. 57.

to develop bylaws that apply to the Inuvialuit harvest of specific species, including muskox, should they be needed.<sup>53</sup>

[51] The foregoing information indicates that the only real risk of overharvest of muskox is by Inuvialuit harvesters, which is highly unlikely given the framework in place to ensure that they are protected in accordance with the conservation measures identified herein and the needs of the Inuvialuit.

[52] Even if there is some risk of overharvest by the Inuvialuit (which I am not suggesting there is), such that it may cause damage to or interfere with the conservation of muskox on the North Slope, then the risk would be based on their own knowledge of the location of muskox and not from information derived from the muskox collared data which is sought by the Applicant. Given this, the evidence provided by the Department does not, on balance, establish that disclosing the collared muskox information to the Applicant could reasonably be expected to cause probable damage or interference with the conservation of muskox in the Yukon.

[53] Based on the foregoing, I find that the Department has not met its burden of proving that subsection 21 (b) applies to the information requested by the Applicant in their Access Request.

## X FINDING

[54] On Issue One, I find that the Department is not authorized to rely on subsection 21 (b) to refuse access to the information sought by the Applicant in their Access Request.

## XI RECOMMENDATION

[55] On Issue One, I recommend that the Department disclose to the Applicant the information they requested in their Access Request.

### Public Body's Decision after Review

[56] Section 58 of the Act requires the Department to decide, within 30 days of receiving this Inquiry Report, whether to follow my recommendations. The Department must give written notice of its decision to me and the parties who received a copy of this report, noted on the distribution list below.

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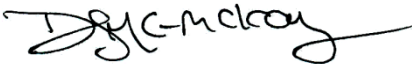
<sup>53</sup> WCMP Vol III, at p. 12.

[57] If the Department does not give notice of its decision within 30 days of receiving this report, then it is deemed to have refused to follow my recommendations.

[58] If the Department does not follow my recommendations, then it must inform the Applicant, in writing, of their right to appeal that decision to the Yukon Supreme Court.

## Applicants' Right of Appeal

[59] Paragraph 59 (1)(a) gives the Applicant the right to appeal to the Yukon Supreme Court if the Department does not follow my recommendation to give the Applicant access to the information to which they are entitled.



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

### Distribution List:

- Public Body
- Applicant

