



Yukon
Information
and Privacy
Commissioner

INQUIRY REPORT

File ATP18-16R, ATP18-17R and ATP18-38R

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

July 26, 2019

Summary

Two Applicants requested access to harvest data of specific big game animals harvested in Yukon. Applicant A requested the number of moose, caribou, wolves, black bears, and grizzly bears harvested by resident hunters and non-resident special guided hunters in each game management subzone for each year between April 2009 and March 2017. Applicant B requested the number of sheep, caribou, and moose, by animal, harvested by non-resident special guided hunters within two outfitting concession areas operated by two outfitters for the period April 1, 2017, to March 31, 2018.

The Department of Environment refused to provide access to the information on the basis that to disclose it would cause business harm to the outfitters (subsection 24 (1)) and would result in an unreasonable invasion of personal privacy of the individual concession holders (subsection 25 (1)).

For Applicant A, the IPC determined that no business information about the outfitters would be revealed. For Applicant B, the IPC determined that the information sought qualifies as a trade secret and commercial information of the two outfitters but found that the information was not supplied in confidence. This is because the harvest of big game data reported by non-resident hunters to the Department is compulsory. The supply of this information is mandated by the *Wildlife Act* and *Wildlife Regulation*. Outfitters cannot, therefore, impose conditions on the supply of the information, including that it be held in confidence. The IPC also determined that the information sought by the Applicants is information about a corporation and not the personal information of individual concession holders. The IPC found that neither subsection 24 (1) nor subsection 25 (1) require the Department to refuse access to the information requested by the Applicants. She recommended that the Department give them access to the information.

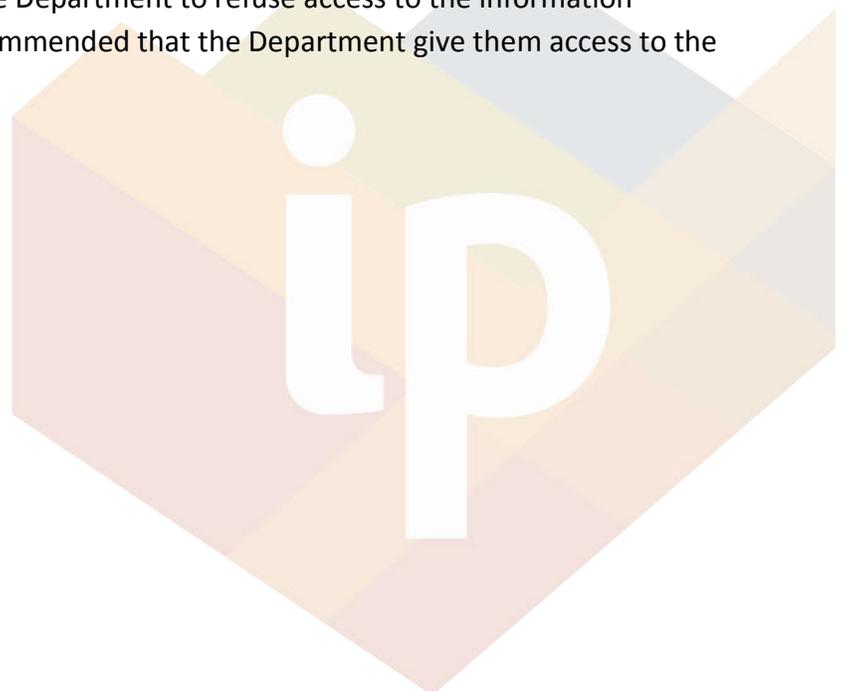
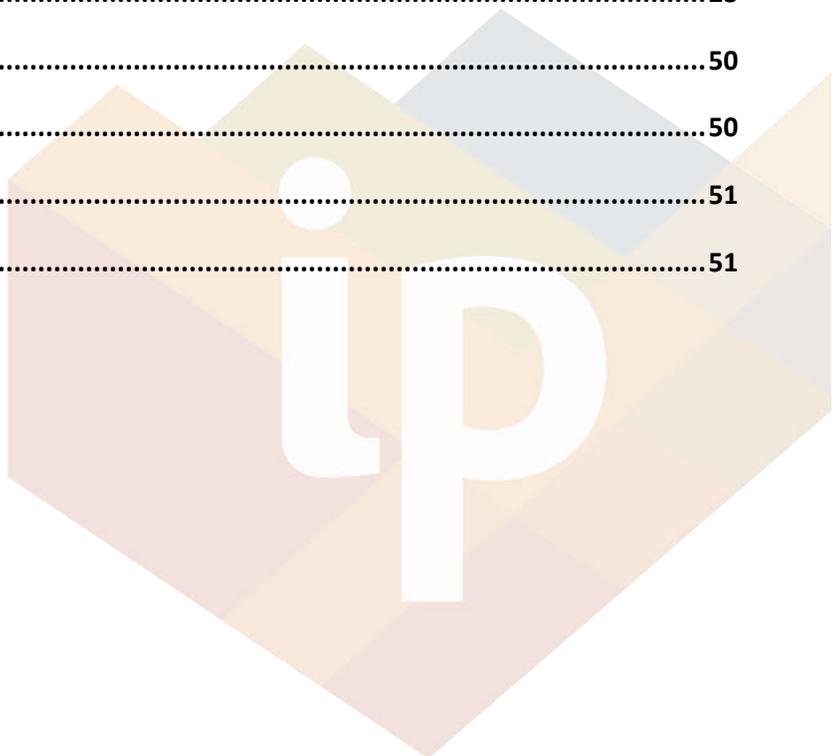


Table of Contents

Summary	2
Table of Contents.....	3
Statutes Cited	4
Cases Cited	4
Explanatory Note	4
I. BACKGROUND	5
II. INQUIRY PROCESS.....	7
III. ISSUES	7
IV. RECORDS AT ISSUE.....	8
V. JURISDICTION	8
VI. BURDEN OF PROOF.....	9
VII. SUBMISSIONS OF THE PARTIES.....	9
VIII. ANALYSIS.....	23
IX. FINDINGS.....	50
X. RECOMMENDATIONS.....	50
Public Body’s Decision after Review	51
Applicants Right of Appeal	51



Statutes Cited

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Information and Privacy Commissioners

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A-2013-014, Department of Environment and Conservation, October 2, 2013, 2013 CanLII 67011 (NL IPC).

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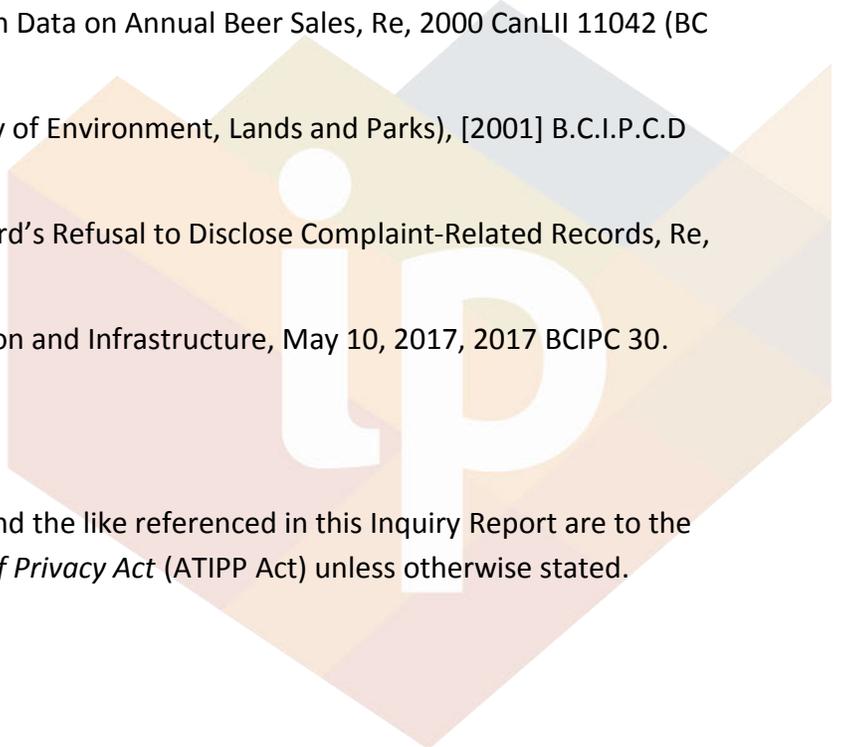
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Order 331-1999, Vancouver Police Board's Refusal to Disclose Complaint-Related Records, Re, 1999 CanLII 4253 (BC IPC).

Order F17-28, Ministry of Transportation and Infrastructure, May 10, 2017, 2017 BCIPC 30.

Explanatory Note

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



I BACKGROUND

[1] Three access to information requests were made by two applicants for records in the custody or control of the Department of Environment (Department). Details about each follow.

#A-6962 (ATP18-16R)

[2] Applicant A requested the following.

Want to know for all big animal (moose, caribou, bison, wolf, black bear, grizzly bear) taken in Yukon: -- the amount taken by non-resident under special guide regulations by game management subzone. – the number of seals sold for those non-resident hunters under the special guide licenses issued for each year requested. Timeline: April 1, 2009 to March 31, 2017.¹

[3] The Department provided access to some of the information but refused to provide access to “the actual number harvested by non-resident special guided hunters for each species of big game animal, including moose, caribou, bison, sheep, goat, wolf, black bear, and grizzly bear, for each year requested in each subzone contained within the Outfitter Concession Areas in Yukon.”² The Department relied on subparagraph 24 (1)(a)(ii), paragraph 24 (1)(b) together with subparagraph 24 (1)(c)(i), and subsection 25 (1) together with paragraph 25 (2)(f) as its authority to refuse to provide access to the information.³

[4] The Applicant requested that we review the decision made by the Department on March 20, 2018. The review was assigned to a mediator and mediation was not successful.

#A-6961 (ATP18- 17R)

[5] In a separate access request, Applicant A also requested the following.

Want to know for all big animal (moose, caribou, bison, wolf, black bear, grizzly bear) taken in Yukon: -- the amount taken by resident by game management subzone. – the numbers of seals sold for all big animal (moose, caribou, bison, deer, sheep, goat, elk, wolf, black bear, grizzly bear) for resident hunters – the numbers of hunting licences sold for small and bit [sic] game category for resident. Timeline: April 1, 2009 to March 31, 2017.

¹ Applicant’s access request made to the Records Manager dated January 10, 2018.

² Fact Report dated June 27, 2018, at p.3

³ *Ibid.*, at p.2.

[6] The Department provided access to some of the information requested but refused to provide access to the information requested about the actual number specifically harvested by resident hunters for each animal species (i.e. moose, caribou, bison, wolf, black bear, grizzly bear) in each year identified, in each subzone in Yukon. The Department relied on subparagraph 24 (1)(a)(ii), paragraph 24 (1)(b), subparagraph 24 (1)(c)(i) and subsection 25 (1) together with paragraph 25 (2)(f) as its authority to refuse to provide access to the information.⁴

[7] The Applicant requested that we review the decision made by the Department on March 20, 2018. The review was assigned to a mediator and mediation was not successful.

#A-7272 (ATP18-38R)

[8] Applicant B requested the following.

Provide quota & harvest data for sheep, caribou, and moose (separately) for the following outfitter concessions.

1) [Outfitter 1]

2) [Outfitter 2]

*Timeline April 1, 2017 to March 31, 2018*⁵

[9] The Department responded to the access request indicating “it is releasing two pages of records” and added the following about the information refused.

*Concession holders have identified that their harvest data constitutes both sensitive business information, such as trade secrets, and personal financing information. The [ATIPP Act] states that Public Bodies must not give out information which is sensitive business information or personal information. Therefore the [Department] withholds, outfitter harvest data under sections 24 (1)(a)(i)(ii)(b)(c)(i) and 25 (1) and 25 (2)(f)...*⁶

[10] The request for review was received by the Office of the IPC on August 30, 2018. My decision on receiving the request was to move it directly to Inquiry without attempting settlement.

⁴ *Ibid.*, at p.2.

⁵ Applicant’s access request made to the Records Manager dated July 13, 2018.

⁶ Department’s response to access request provided to the Records Manager dated August 9, 2018.

II INQUIRY PROCESS

[11] On July 10, 2018, two Notices of Written Inquiry for #A-6962 and #A-6961 were delivered to Applicant A and the Department. Each made submissions setting out their respective positions in respect of the issues.

[12] On October 22, 2018, the Notice of Written Inquiry for #A-7272 was delivered to Applicant B and the Department. Both the Department and the Applicant made submissions.

[13] Given that the Department refused to provide Applicant B with access to the above noted information, citing that a third party, Outfitter 1 and Outfitter 2, would suffer business harm (section 24) and that disclosure of the information would be an unreasonable invasion of their personal privacy (section 25), I requested submissions from these Outfitters.

[14] Outfitter 1 provided their submission on March 15, 2019, and Outfitter 2 on March 22, 2019. The Department and Applicant B were provided an opportunity to reply to the submissions. Applicant B provided their submission on April 1, 2019. The Department did not provide a submission.

[15] Given the similarity of the information requested by the Applicants and the provisions relied on to refuse access to the information by the Department, I decided to conduct one Inquiry for #A-6961, #A-6962 and #A-7272 (Access Requests).

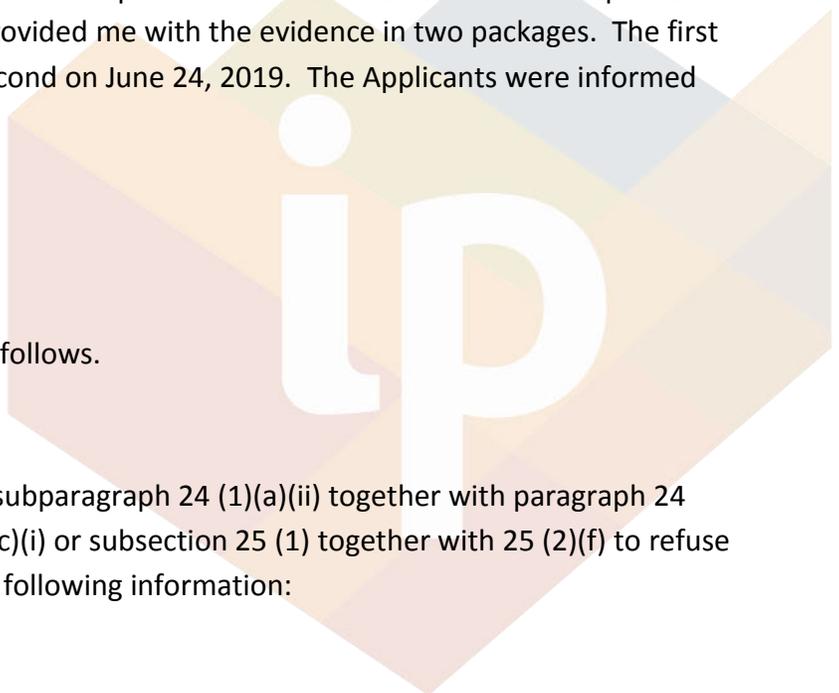
[16] Having reviewed the evidence provided by the parties, I determined additional evidence from the Department was required to decide the issues in the Inquiry. On May 9, 2019, I requested the Department to provide me with specific evidence. The deadline for response was May 21, 2019. The Department provided me with the evidence in two packages. The first was received on May 27, 2019. The second on June 24, 2019. The Applicants were informed about the request for evidence.

III ISSUES

[17] The issues in this Inquiry are as follows.

Issue One:

Is the Department required by subparagraph 24 (1)(a)(ii) together with paragraph 24 (1)(b) and subparagraph 24 (1)(c)(i) or subsection 25 (1) together with 25 (2)(f) to refuse to provide Applicant A with the following information:



- a. the actual number of big game animals harvested by non-resident special guided hunters for each species of big game (i.e. moose, caribou, wolf, black bear, grizzly bear) in each subzone in Yukon for each year between April 2009 and March 2017; and
- b. the actual number of big game animals (i.e. moose, caribou, wolf, black bear, grizzly bear) harvested by resident hunters in each subzone in Yukon between April 2009 and March 2017?

Issue Two:

Is the Department required by subparagraph 24 (1)(a)(i) or (ii) together with paragraph 24 (1)(b) and subparagraph 24 (1)(c)(i) or subsection 25 (1) together with 25 (2)(f) to refuse to provide Applicant B with the following information:

- a. non-resident hunter⁷ harvest data for sheep, caribou, and moose (separately) for two outfitting concessions operated by Outfitter 1 and Outfitter 2 between April 1, 2017 and March 31, 2018?

IV RECORDS AT ISSUE

[18] For #A-6962, 64 pages were provided. They are numbered 0001 to 0019 and 0022 to 0066.

[19] For #A-6961, 55 pages were provided. They are numbered 0001 to 0010, 0019 and 0022-0066.

[20] For #A-7272 one page was provided, numbered 0003.

(Records)

V JURISDICTION

[21] In the Records Manager's response to Applicant A, for #A-6961 and #A-6962, they indicated that some Records were refused in whole and some information was separated or obliterated from the Records provided.

⁷ The Applicant confirmed that their request was limited to harvest data by 'non-resident' hunters in the Outfitter 1 and Outfitter 2 concession areas. The information requested was confirmed with the Department during the Inquiry.

[22] In the Records Manager's response to Applicant B, for #A-7272, they indicated that some information was separated or obliterated from the Records provided.

[23] My authority to review the Department's decision to refuse to provide an applicant with records or to separate or obliterate information from a record 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;

(b) a decision by the public body to separate or obliterate information from the record;

VI BURDEN OF PROOF

[24] Paragraphs 54 (1)(a) and (b) set out the burden of proof relevant to this Inquiry and identify that the burden is on the Department to prove that an applicant has no right to the records or to the information separated or obliterated from 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 or the part of it in question,...

VII SUBMISSION OF THE PARTIES

[25] The Department indicated the following in its submissions in respect of #A-6962 and #A-6961.

[2] *The [Department] partially responded to the request, but withheld information which directly or indirectly discloses business or personal information of outfitters. Since total harvest numbers are regularly provided to the public, disclosure of either resident or non-resident harvest would allow for the calculation of harvest data for outfitting concessions.*

[3] *The [Department] withheld information based on past correspondence from outfitters as third parties, as outlined below.*

- [4] *On March 23, 2017, the [Department] sent a request for a third party consultation to the Records Manager in response to Access Request #A-6488. A portion of that request was for:*
- annual big game harvest data for all licensed Yukon [b]ig [g]ame [o]utfitters by concession.*
- [5] *Several third parties responded that they did not want their harvest information released, citing reasons that would fall under sections 24 and 25 of the [ATIPP Act].*
- [6] *The [Department] made the decision not to release outfitter harvest data in response to Access Request #A-6488.*
- [7] *On May 19, 2017, the [Department] sent a request for a third party consultation to the Records Manager in response to Access Request #A-6731. A portion of that request was for:*
- grizzly bear the amount of bear taken by non resident by game management subzone.*
- [8] *Several third parties responded that they did not want their harvest information released, citing reasons that would fall under sections 24 and 25 of the ATIPP Act.*
- [9] *The [Department] made the decision to not release outfitter harvest data in response to Access Request #A-6731.*
- [10] *Prior to responding to Access Request #6962 [and #6961], the [Department] reviewed the letters from the third party consultations from Access Requests #A-6488 and #A-6731, and made a determination that the third party concerns would apply to Access Request #A-6962 as well, citing sections 24 (1)(a)(ii)(b)(c)(i) and 25(1) of the ATIPP Act.*
- [11] *The [Department] is required by section 24 of the ATIPP Act to withhold sensitive business information. In the case of outfitters, the locations of successful hunts are considered to be part of their trade secrets (s.24(1)(a)(i)) and the rate of success in a particular area indicates the commercial value of a concession. The [Department] has received a number of informal requests for historical outfitting concession harvest data from individuals interested in purchasing concessions, and they have been denied access because it is considered commercial information of the concession holder. This infers that the information supplied will be treated as confidential (s.24(1)(b)). The negotiating position of the*

concession holder may be significantly harmed by public perception when the concession holder is negotiating quotas with Renewable Resource Councils (RRCs) (s.24 (1)(c)(i)).

[12] *The [Department] is required by section 25 (1) of the ATIPP Act to withhold third party personal information, if the disclosure would be an unreasonable invasion of the third party's personal privacy. Outfitters are often individuals as well as the closely held corporation. Release of their harvest data would in essence reveal their income, because the harvest numbers could be multiplied by published rates per hunt (s.25 (2)(f)).*

[13] *Based on past third party responses received, the [Department] determined that the data requested would be provided at the aggregate level (i.e., for all harvest) but not at the resident/non-resident level.*

[26] Applicant A replied to the Department's submission for both #A-6962 and #A-6961. They stated as follows.

1 - I do not think that the data requested will impact the section 24 of the ATIPP Act, because I've never asked to have the name of the outfitting concession nor the individual name related to it nor the subzones connected for any of the concession holders.

2 - I do not think that the data required will impact the section 24 of the ATIPP Act, because it is hard to connect a concession with the subzones as some are overlapping between 2 or 3 concession holders.

3 - Because it is hard to know the price of a hunt as taken from the Yukon Outfitters Association Website there is a total of 20 outfitting concessions. For now, 13 appear to be members and so 7 others are not directly linked and hard to find. On [sic] the 13 members today only 5 are showing an indication of prices for any hunt (prices are not the same and vary).

4 - Some, if not all, of the outfitters are providing free hunts to TV hosts and outdoors writers so it will [sic] hard to do a calculation of the real income for each outfitter as some harvests will not count as income.

5 - At least two outfitters do not have a quota set up (except for grizzly) concession #9 and #15 therefore the (11) of the public body answer does not apply on the negotiation for annual quota negotiation.

6 - All the concession holders, except one, for a small part of his concession has no quota for sheep therefore the (11) of the public body answer does not apply on the negotiation for annual quota negotiation.

7 - All the concession holders received tri-annual grizzly quota directly from the public body therefore the (11) of the public body answer does not apply on the negotiation for annual quota negotiation.

8 - There is only one outfitter allowed to hunt rocky mountain goat with a quota and the [Department] is publishing every year the harvest taken in the area with a difference between resident and non resident harvests therefore the public body is not protecting the outfitter and this is for section 24 and 25 of the ATIPP Act.

[27] The Department provided the same reply to Applicant A's submission in respect of #A-6962 and #A-6961. It stated as follows.

[1] *27 third party consultations were sent in A-6488; 11 responded to that consultation, 29 third party consultations were sent in A-6731; 10 responded to that consultation.*

[2] *No outfitting concession holders were contacted for Access Request #A-6961 or #A-6962; as outlined in the [Department's] initial submission, the previous responses to third party consultations were reviewed before making a decision to withhold information in response to the current requests.*

[3] *The applicant argues that they have not requested names. Whether or not the name of the outfitter is requested as part of [these] particular Access Request[s], it is information that is readily available through other sources (such as the Yukon Outfitters Association, or using an internet search engine such as google), and a disclosure under the ATIPP Act is considered to be a disclosure to the public, it would be easy to tie that data back to a particular outfitter, and infer their income.*

[4] *The applicant argues that it is difficult to attribute a particular subzone to a particular outfitting concession area. While there is a large deviation between outfitter concession areas and game management zones, at the subzone level, many subzones fall mostly or entirely within a specific outfitter concession area. Of the 375 subzones that do fall under outfitting concession areas, 256 or 68% of those subzones are at least 95% attributable (by area) to a particular outfitting concession.*

- [5] *A report prepared for Yukon Government Economic Development Department and published in April 2016 titled “Yukon Outfitters – Social-Economic Profile and Situational Analysis” notes that the “Guided big game hunts in Yukon range from about US\$10,000 for a barren ground caribou hunt to sheep hunts that cost US\$40,000 or more. Based on outfitters survey data, the average guided hunter paid about US\$20,000 for their hunt...” This suggests that outfitters do not consider their rates to be closely guarded secrets, as they are willing to share them during the survey. It also presents an income range, if not an absolute value, based on harvest numbers.*
- [6] *The applicant asserts that some guided hunts are not for fee-paying customers, but rather in-kind promotional value, and therefore it is difficult to calculate total income based solely on harvest numbers. However, section 25 (2)(f) of the [ATIPP Act] does not solely reference an individual’s income, but includes assets and net worth. If there are in-kind activities related to hunts, presumably they have some commercial value to the outfitter, and contribute to their assets and net worth.*
- [7] *The applicant argues that section 24(1)(c)(i) does not apply to specific circumstances around quota negotiation. While this is one of [the] more significant implications of making outfitter harvest data public, it also has an impact on the valuation of a concession based on income generating potential.*
- [28] The Department made the following submissions in respect of #A-7272.

Background information:

1. *Yukon outfitters are licensed and regulated under the Wildlife Act and regulations.*
2. *The Yukon Territory is broken up into 20 outfitting concessions. These concessions are identified by number.*
3. *Outfitting concession number [#] is currently licensed by [Outfitter 1].*
4. *Outfitting concession number [#] is currently licensed to [Outfitter 2].*
5. *Outfitters are required to have 2 separate licenses under the Wildlife Act and regulations. One is their outfitter concession licence; the other is their annual operating certificate. A natural person must hold both of these licences. However, in the case of these two outfitters, the Minister has given permission for the person who holds the license to ‘share’ them with a corporation. [footnote 1 states “See section 38 of the Wildlife Act.”]*

Licenses are required to report how many big game animals their guided clients kill. We call this the outfitters' harvest. In addition, the hunter being guided is required to have permits and seals for the big game animals harvested.

The [Department's] application of the [ATIPP Act] in refusing to release harvest numbers is based on the following:

24(1) A public body must refuse to disclose to an applicant information

(b) that is supplied, implicitly or explicitly, in confidence.

1. *YG 637 Outfitter/Chief Guide/Hunter Report is the form used to report kills and explicitly states:*

"Personal information contained on this form is collected under the Wildlife Act and associated regulations and will be used by the Department of Environment for research, statistical and enforcement purposes."

This clearly states the purpose for which this information was collected and the principal of [Outfitter 2] in a 3rd party response to another similar inquiry in April 2017 clearly indicated that they deemed that to guarantee confidentiality of all information provided. That interpretation was reinforced in the same letter when they indicated that their own request for similar information in 2012 was refused, citing the privacy provisions of the act.

(a) that would reveal

- (i) trade secrets of a third party, or*
- (ii) commercial, financial...information of a third party*

(c) the disclosure of which could reasonably be expected to (i) harm significantly the competitive position, or interfere significantly with the negotiating position of the third party, (iii) result in undue financial loss or gain to any person or organization, or

1. *The rate of successful hunts represents a commercial advantage consistent with the definition of trade secret that if made public could compromise that competitive advantage of each of these outfitters. Further, the public body has been informed by the Yukon Outfitters Association that disclosing harvest data associated with an individual outfitter would harm their competitive position in the market place. In other words, if 4 stone sheep have been taken from an outfitters' concession in 2017, a hunter could choose to go to another outfitter*

who has had fewer sheep taken. Alternatively, in this same example, another hunter may choose to go to the outfitter which has the higher success rate harvesting a particular big game animal. Outfitter concessions are [a] highly sought after commodity in the territory and may be sold without government approval. Access to harvesting information for either of these outfitters could provide a potential purchaser with an undue advantage during any subsequent negotiations and a subsequent financial loss to the owners.

25(2) A disclosure of personal information is presumed to be an unreasonable invasion of personal privacy if

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

- 1. [Outfitter 1] identifies the owner...Though less specific it is clear from the [Outfitter 2] site the owners are [names of owners]. This narrow ownership is typical across all outfitter concessions in the territory.*

When combined with the information sought by the requestor this constitutes personal information about [owners of Outfitter 1 and Outfitter 2]. Specifically, personal information about each of their financial and employment history.

The [Department] also examined the balancing factors described in s.25(4) and was of the view that 24(1)(a) and (c) both applied which supported the determination that disclosure would be an unreasonable invasion of [the personal privacy of the owner of Outfitter 1 and the owners Outfitter 2].

*The [Department] considered a federal case **PIPEDA Case Summary #2003-181** [citation omitted] which considered the link between corporate and personal information for a closely held business. In that case the Commissioner concluded:*

"Given the extraordinary nature of the complainant's dealings with the bank, the Commissioner was of the view that it would be extremely difficult to separate the complainant's personal information from his business information. Thus, he determined that the information at issue in this particular case was personal information for the purposes of section 2 of the Act."

I maintain that the [Department] has applied the mandatory exceptions in the ATIPP Act as required in protecting the business interests of the two outfitters as well as the

private information of the three individuals to the best of our knowledge. [Emphasis in original]

[29] Applicant B replied to the Department's submission for #A-7272. They stated as follows.

As a member of the public I should have the right to have an educated opinion about renewable resources and their distribution in the Yukon. In the newspapers the dispute concerning hunt closure on the North Canol Road was publicized. Hunting friends and family members were discussing decreasing big game numbers in the area. In order to form an opinion, some insight in the quota and harvesting numbers is necessary, otherwise it would be pure speculation. My understanding was that the ATIPP Act would allow me to access this information.

Application of Section 24 (1) as reason for refusal of disclosure

Section 24(1) cannot be used as reason for disclosure refusal because

- (1) *If a private person does not work in the outfitting [sic] it cannot be assumed without reasonable doubt that this person has the intention to request ATIPP information for the purpose to harm another outfitting company by passing on commercial or financial information, or trade secrets to a third party.*
- (2) *The reasons brought forward by the Department...to prove that the knowledge of quota and harvest numbers could cause significant harm to the business are insufficient and speculative. In the case of the knowledge about how many animals are taken by a certain outfitter the argument is that it could either lead to more bookings or less bookings...In other words, the outcome is not predictable and therefore speculative.*
- (3) *Section 25(2) must also be considered an insufficient argument. Even if a private person would have interest in the finances,...etc. of a commercial company the quota and harvesting rate would only provide an estimate of gross income. Without the knowledge of any expenses or other liabilities it is not possible to gain any knowledge of the net worth, bank balances, financial history etc. of a company. Even the gross income cannot be calculated without knowledge of special deals for multiple animal harvest or other specials.*
- (4) *Since the concessions cover large areas locations of harvested animals could not be possible without the exact coordinates. Therefore, no secret locations could be passed on to other hunters.*

[30] The Department did not submit a reply to Applicant B's reply.

[31] Outfitter 1, a third party to this Inquiry, provided the following submission.

...I would like to thank the Department...for denying the requested information as it would create financial harm to myself, my business and my twenty employees, who all reside in Yukon. I would like to make it clear that I do not want the applicant (whomever that may be) to access the requested information.

It has taken myself and my employees nearly twenty years of hard work, time away from our families to educate ourselves where, when and how many sheep, moose and caribou may be found and harvested in my concession. To give any or all of the requested information would give the applicant the knowledge, ability to where and when to hunt within my concession or the ability to share our harvest statistics with any resident hunter located in the Yukon. My business relies on sound game management with very selective harvest on moose, caribou and sheep within my concession.

It is also critical on privacy of camps and sites within the concession as they show where game populations could be located nearby. As stated before, I have years of personal and corporate knowledge that has provided me information on game movement and harvest that was obtained with personal experience and at great cost of time, resources and energy. In closing, releasing the requested information will cause irreversible financial harm to my investment and hard costly work in building up my financial and knowledge of the resources I depend on for financial income and security.

I am opposed to releasing any and all information regarding my harvest or quota information, that I am legally obligated by the Department...to report all animals harvested by [Outfitter 1]. Not only harvested animals but exact locations where the animal was harvested. This mandatory form is time sensitive and a legal requirement, this information must be held confidential between myself and the Department...If any of this information is released it will have irreversible financial harm to myself, my company and all my employees. Releasing this information could also lead to overharvest of all species if other hunters [sic] where to find out our hunt locations. I hope that you consider the negative implications on releasing my harvest and quota information and decline the request of disclosing it.

[32] Outfitter 2, a third party to this Inquiry, provided the following submission.

As the Outfitter [of a] concession, I firmly support the Yukon Department(s) [sic] to refuse to disclose my company and personal information with respect to quota and harvest data, for sheep, caribou and moose (separately or combined) as applied for under the ATIPP Act. I have and will continue to oppose the Department (s) providing this data or information requested under the ATIPP which is in deference to the confidentiality

agreement and policy for which it is supplied to the department; and under section 24 and section 25 of the Act that requires refusal of a public body to provide data or information to an applicant if such meets the following criteria.

Section 24 – The Public Body must refuse to disclose to an applicant, information that would reveal the following:

- *My trade secrets are the methods and process that I carry out my hunts that involve my own learned techniques and methods from years of experience. These methods can be devolved from learning and tracking my quotas learning the sites or areas, and success with the hunts. If the data is provided by the department the customer information may be discovered or determined.*
- *My personal and corporate, commercial and financial information can be determined as the price per hunt is generally known within certain range by species and accessible by the public. This directly relates to the quota and harvest numbers by species in calculation of value of that concession.*
- *Therefore by releasing the quota numbers which provides my potential income and then especially the harvest data that indirectly provides the direct income of my company, as I as the outfitter control all commercial hunting in that concession area, will allow the applicant to determine within reasonable time limits my financial and corporate income. Thus must be refused.*
- *If my quotas or harvest information are provided for the specific animal in my concessions, and if also by location, it allows the applicant to access my technical information that I acquired by knowledge and experience at often great expense and years of experience in knowing the habitat, game trails and resident areas. By releasing this information to the applicant the department will cause me harm financially as it allows the applicant the knowledge to access specific areas where I not only hunt and gain my income but also endeavour to improve or sustain habitat, and sustained game to ensure that the resources is sustainable, which also makes sure my business is also sustainable. Release of the Quotas and Harvest info at the concession level will have the potential of encroachment or migration into specific areas of my concession if they believe that the information provided would allow resident success. That directly would harm my income personally but also would interfere with my business trade secrets of knowing the game positioning and timing based on knowledge or experience and as such interfere and [sic] cause disruption to my hunting methods and more importantly my client's enjoyment of the experience, I advertise [sic]. My business would potentially*

based on the inflow of people be harmed by reduction of the sustainable game as resident hunts not under quota increase and reduce my quotas further.

- The disclosure of my quota and hunting information will potentially with proven probability [sic] on historic review of such causal agents, harm to my competitive position with other Yukon and BC Outfitters as it is a proven fact if numbers as provided in Quotas and thus harvest data are positive then it adds an incentive to residents and other hunters to migrate to where the game is stated to be, especially in disclosures like this.

- If my data causes this migration then the Outfitters who are not under that increased pressure can offer a better and more beneficial economical experience to hunters I compete for in my business.

- Thus in order to compete I am either forced to expand into other areas or limit my hunts to maintain what I believe, and government should want is a sustained level of game and habitat. If the Department breaches its commitments when I report my harvest and negotiate my quotas that all will be held in confidence and only shared with other Governments such as First Nation or Federal by agreements or under law my business will be damaged.

- I believe that the proof of many of the points I have made can be shown in details of such actions Government of Yukon has learned through the implementation of tenure concessions as positive to the economy; and unintended consequences of the implementation by Yukon to implement the Faro Threshold Hunt and its publications of numbers of moose to be hunted and thus the problems that has caused not only to sustainability but to the near or adjacent Outfitters like myself and my corporation. Good and bad effects on our business.

The Section 25 – requires a public body must [sic] not disclose personal information of a third party if such is an unreasonable invasion of personal or in this case as well corporate privacy. While much of this is directly or indirectly accounted for in above points I will add clarification.

- As the hunting industry or the Outfitters in Yukon are restricted to concessions in specific areas their opportunities to harvest commercially are restricted by law to those areas. Yukon residents on the other hand, and the Yukon First Nations are basically allowed to hunt in any location within the Yukon that has an open hunting season or where the FN traditional territory allows for specific signed FNs. While in case a specific permit is required all residents can apply for such. As such the Outfitters, such as I, have to learn our concessions well and know intimately the game populations and areas they

habit or live plus migrate. To do this, we are integral to the sustainability not only of the species we hunt but also the habitat they require. This may be required by law and good judgement of Yukon Peoples and my belief is sustainability and do no harm, but more importantly it is required to ensure our long term management and economic viability of the business that feeds my family. Disclosure of our quotas and then Harvest success for the species requested all which have a known value or cost that most people involved, even marginally in hunting, can determine almost directly our personal and corporate income.

- *Thus one can figure financial, economic factors from harvest and quotas for not only income but stability. This is a direct invasion of our privacy as determined in section 25 and can cause harm if disclosed.*

- *As there are many protectionists who are anti hunting in the Yukon the disclosure of such quota or harvest information, then if and when published in a negative light, can cause personal or corporate harm to our reputations without the required explanation or knowledge provided to understand the lifestyle or benefits that the outfitting industry provides to the Yukon. A needless disruption and cost to our lives and business.*

- *As such if the quota and harvest information is disclosed and published or distributed there is a direct cost to Outfitters to then counter the often negative context or publicity for what is basic invasion of private data supplied as a requirement to Yukon Government but with assurance of confidentiality. Often that data is used to adversely cost a large amount of time and effort including personal funds to try to overcome. The information if disclosed in raw form can and is often used to portray inaccurate or negative information with respect to the corporation or myself as the outfitter.*

- *Each year there are many responses that and many associated subjects that negatively portray Outfitters financially or environmentally, based solely on some negative perception by disclosing unfairly or disclosing without the full disclosure of associated sustainability and affecting issues of unfair and certainly threatens the financial and viability of the outfitter. If that harm is not a direct invasion of privacy what would be?*

- *The disclosure of the Quota and harvest information will have far reaching adverse affects on the Outfitter affected. The disclosure of the quota and harvest information will lead to potential if not real migration of hunting interest to that area disclosed. That will directly affect the game and sustainability as more hunting arrives, it will affect the cabins and hunt camps that increased presence of new interested hunting use often use without permission [sic], and it will interfere with the predicted*

sustainability as the unforeseen disclosure brings new interest to that hunt. The increased encroachment brings new ORVs and pressure not only on the sustainability of the game and species requested but also the habitat destruction caused will increase often the mortality of game in winter due to lower shelter and food source for the species of the request. This costs financially due to loss.

- The disclosure has potential far reaching effects that directly not only affects the outfitter financially, but also in areas a long and costly learned set of trade secrets such as game and habitat knowledge through experience, and they need to move within limited space to provide commercial hunts and the wilderness experience that non-resident hunters expect and pay for. Keeping in mind that the concession space is limited. So the costs rise and the financial burden increases but it does not have to be caused by the disclosure as requested in violation of section 24 and 25 and therefore the disclosure must be denied, if not for the reasons provide [sic] but for the good of the species and their habitat in Yukon.

[33] Applicant B provided the following reply to the submissions of the third parties.

In my opinion, the Yukon wildlife is a public resource which is shared by four stakeholder groups:

- 1. First Nations (subsistence hunting)*
- 2. Local non-native hunters (subsistence and/or trophy hunting)*
- 3. Commercial outfitters (trophy hunting)*
- 4. Tourists and/or photographers (wildlife enjoyment)*

All stakeholders have the right to access concession areas and can apply for hunting permits.

None of these stakeholder groups has exclusive access rights in the concession areas since it is a shared public resource and none of these groups can claim ownership to Yukon wildlife. Only when an animal is taken, it can be claimed by the hunter.

Outfitters have concession rights and can own buildings or camps on their concession, but they do not have legal ownership of the animals.

As a public resource the numbers of harvested animals should be transparent. Transparency is important since it will prevent "finger-pointing" should sustainability issues arise (e.g. the Kaska Dena decision to shorten the hunting season or close the season in certain areas of their traditional territory). To gain some more clarity, my

request was focussed on quotas and harvest rates since I was under the impression the ATIPP Act could help me to access this information.

The refusal of my request should not be granted under Section 24 since I was not asking for additional, personal or business 'secret' information such as:

- 1. Locations of hunting sites or even hunting subzones*
- 2. Locations of outfitter cabins or camps*
- 3. Game habitat information*
- 4. Game positioning or timing*
- 5. Outfitter hunting secrets*
- 6. hunting techniques*

Section 25 is also irrelevant to my request since I do not require disclosure of:

- 1. Commercial or private income information*
- 2. Access to private or business bank accounts*
- 3. Information about credit rating*
- 4. Business debts*

The argument that I could 'calculate within reasonable limits the corporate and financial income' is not reasonable.

In order to estimate the net business income of [Outfitter 2 or Outfitter 1] I would need to have:

- 1. Proprietorship information*
- 2. Total amount of guide and other stuff [sic] wages*
- 3. Total of transportation and vehicle expenses*
- 4. Insurance costs*
- 5. Food and other supplies expenses*
- 6. Building maintenance and depreciation costs*

None of the above is asked for in my request.

Additional arguments such as game management and game behavior are not relevant in this discussion. The same applies to the statement that a person with different values may use this information to support a matter of interest. The latter argument is speculative.

For these reasons I would not understand a refusal of my request.

[34] The Department did not provide a submission in reply to the third parties' submissions.

VIII ANALYSIS

[35] Section 5 establishes the Applicants' right to access records in the custody or control of the Department, which is a public body under the ATIPP Act. The Records are in the Department's custody or control.

[36] The only exception to the Applicants' right of access to the Records or information therein under section 5 is if an exception applies. The exceptions to the right of access are set out in Part 2 of the ATIPP Act. Most of the exceptions in this Part are discretionary. Some are mandatory. The Department is obligated under subsection 5 (2) to provide the Applicants with the remainder of a record where it is able to separate or obliterate information from records to which it applies an exception. As indicated, some records were refused in full and some in part. The Department is relying on a number of provisions under section 24 and 25 to refuse access to the Records or information therein. These sections are mandatory exceptions to the right of access. If any of these provisions apply, then the Department must refuse access.

[37] For both Applicant A and B, the Department refused to provide them with harvest data requested on the basis that disclosure of the information to the Applicants would cause business harm to outfitters (subsection 24 (1)) and would result in an unreasonable invasion of their personal privacy (subsection 25 (1)).

[38] Yukon's *Wildlife Act*⁸ establishes the rules for hunting in Yukon. Section 6 states that:

No person shall hunt or trap a species or type of wildlife at any time in any area of the Yukon unless the hunting or trapping by that person of that species or type of wildlife at that time in that area is permitted under this Act.

[39] Section 7 establishes the requirement that a person obtain a licence or permit to hunt.

⁸ RSY 2002, c.229, as amended (May 14, 2009, December 17, 2009, December 6, 2012 and January 1, 2017).

[40] Subsection 50 (1) of the *Wildlife Act* states that an outfitting concession may be issued by the Minister “to an individual who

(a) is a Canadian citizen or permanent resident;

(b) ordinarily resides in Canada; and

(c) meets any other qualifications prescribed by the regulations.

[41] “Outfitting concession” is defined in the *Wildlife Act* as “an outfitting concession issued under Part 2 of this Act and includes any conditions imposed on an outfitting concession.”

[42] Section 53 of the *Wildlife Act* provides the exclusive right to an outfitter to guide hunters of big game animals for commercial purposes within their concession area. It states as follows.

An outfitting concession reserves from all persons other than the holder of the outfitting concession, the exclusive opportunity, in accordance with this Act, to provide guides to persons hunting for big game animals in the outfitting concession area.

[43] “Outfitter” is defined in the *Wildlife Act* as “an individual who holds an outfitting concession under this Act.”

[44] Schedule A to the *Wildlife Regulation* (Regulation)⁹ identifies big game animals as muskox, polar bear, grizzly bear, black bear, wolf, coyote, wolverine, sheep, mountain goat, moose, mule deer, white-tailed deer, wood bison, elk, and caribou.

[45] Subsection 55 of the *Wildlife Act* restricts an outfitter from guiding any person hunting big game animals unless they have an operating certificate.

[46] Subsection 56 (1) of the *Wildlife Act* states that “[a]n operating certificate allows the outfitter and a corporation with a permit issued under subsection 38 (3), to provide guides to persons for hunting big game animals in the outfitting concession in respect of which the operating certificate is issued...”

[47] Subsection 58 (1) of the *Wildlife Act* authorizes an outfitter to provide a guide to a person to hunt big game animals in an area where no outfitting concession is in effect with Ministerial approval.

[48] Section 38 of the *Wildlife Act* establishes who can enter into a contract to guide or otherwise provide or offer to provide a guide to a person hunting for big game animals. Only

⁹ OIC 2012/84, as amended.

outfitters, special guides with a special guiding license, and the holders of a big game guiding permit may do so.

[49] Subsection 38 (1) of the *Wildlife Act* requires the Minister to issue a permit to the outfitter and to an eligible corporation named by the outfitter that authorizes the outfitter and corporation “in the name of the corporation” to enter into a contract to guide a big game animal hunter and to provide or offer to provide a guide to a big game animal hunter.

[50] Subsection 38 (4) of the *Wildlife Act* defines “eligible corporation” as “a corporation that is in good standing under the *Business Corporations Act*; that has the corporate power and capacity to provide the services of a guide for hunting big game animals; of which the outfitter is a director;...”

[51] Subsection 59 (1) of the *Wildlife Act* authorizes the Minister to “issue a special guide licence to a Yukon resident to authorize the Yukon resident to accompany and assist a non-resident Canadian citizen or permanent resident in hunting a big game animal.”

[52] Section 74 of the *Wildlife Act* authorizes the Minister to, after the first year of holding an outfitting concession, re-issue the concession for up to a ten-year term that is renewable.

[53] Subsection 78 (2) of the *Wildlife Act* authorizes an outfitting concession to be transferred to an individual who is a Canadian citizen, permanent resident or who ordinarily resides in Canada. Subsection 78 (3) authorizes the Minister to transfer a concession to the transferee for all or part of the remaining term of the concession.

Subsection 24 (1) of the ATIPP Act

[54] Subsection 24 (1) of the ATIPP Act states the following.

24(1) A public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party;

(b) that is supplied, implicitly or explicitly, in confidence; and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position, or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) [not applicable]

[55] In order for subsection 24 (1) to apply to the information or records refused, all three paragraphs, (a), (b) and (c), of this subsection must be met.

[56] In *Merck Frosst Canada Ltd. v. Canada (Health)* (Merck),¹⁰ a decision by the Supreme Court of Canada, Cromwell J. writing for the majority, stated the following about the purposes of access to information legislation in Canada and how the right of access to information enshrined therein must be balanced against the right of businesses not to suffer harm as a result of disclosure of their sensitive business information.¹¹

The purpose of the Act is to provide a right of access to information in records under the control of a government institution. The Act has three guiding principles: first, that government information should be available to the public; second, that necessary exceptions to the right of access should be limited and specific; and third, that decisions on the disclosure of government information should be reviewed independently of government...

In Dagg v. Canada (Minister of Finance), 1997 CanLII 358 (SCC), [1997] 2 S.C.R. 403, at para. 61, La Forest J. (dissenting, but not on this point) underlined that the overarching purpose of the Act is to facilitate democracy and that it does this in two related ways: by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and officials may be held meaningfully to account to the public. This purpose was reiterated by the Court very recently, in the context of Ontario's access to information legislation, in Ontario (Public Safety and Security) v. Criminal Lawyers' Association, 2010 SCC 23 (CanLII), [2010] 1 S.C.R. 815. The Court noted, at para. 1, that access to information legislation "can increase transparency in government, contribute to an informed public, and enhance an open and democratic society". Thus, access to information legislation is intended to facilitate one of the foundations of our society, democracy. The legislation must be given a broad and purposive interpretation, and due account must be taken of s. 4(1), that the Act is to apply notwithstanding the provision of any other Act of Parliament: Canada Post Corp. v. Canada (Minister of Public Works), 1995 CanLII 3574 (FCA), [1995] 2 F.C. 110, at p.

¹⁰ [2012] 1 SCR 23, 2012 SCC 3 (CanLII).

¹¹ *Ibid.*, at paras. 21 to 23.

128; Canada (Privacy Commissioner) v. Canada (Labour Relations Board), 1996 CanLII 4084 (FC), [1996] 3 F.C. 609, at para. 49, aff'd (2000), 2000 CanLII 15487 (FCA), 25 Admin. L.R. (3d) 305 (F.C.A.).

Nonetheless, when the information at stake is third party, confidential commercial and related information, the important goal of broad disclosure must be balanced with the legitimate private interests of third parties and the public interest in promoting innovation and development. The Act strikes this balance between the demands of openness and commercial confidentiality in two main ways. First, it affords substantive protection of the information by specifying that certain categories of third party information are exempt from disclosure. Second, it provides procedural protection. The third party whose information is being sought has the opportunity, before disclosure, to persuade the institution that exemptions to disclosure apply and to seek judicial review of the institution's decision to release information which the third party thinks falls within the protected sphere. These appeals raise significant issues about the interpretation of the substantive protections as well as about how the procedural protections should operate.

[57] In *Merck*, the SCC was reviewing a decision by the Federal Access to Information Commissioner made under the *Federal Access to Information Act*. The provision at issue in this decision is subsection 20 (1), which states as follows.

Third party information

20 (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

(b.1) information that is supplied in confidence to a government institution by a third party for the preparation, maintenance, testing or implementation by the government institution of emergency management plans within the meaning of section 2 of the Emergency Management Act and that concerns the vulnerability of the third party's buildings or other structures, its networks or systems, including its computer or communications networks or systems, or the methods used to protect any of those buildings, structures, networks or systems;

(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

[58] When interpreting provisions of the ATIPP Act, I must consider the words therein together with its purposes and its scheme and intention of Parliament.¹² I must also interpret it in such a manner that best ensures the attainment of its objects.¹³

[59] One of the purposes of the ATIPP Act is to make public bodies more accountable by providing the public with a right to access information in the custody or control of a public body, here the Department.¹⁴ Part 2 of the ATIPP Act (access to information provisions) sets out these rights. Another purpose is to limit the exceptions to the right of access.¹⁵ Within Part 2 are a number of exceptions to the right of access. Some are discretionary and others mandatory. The exception in subsection 24 (1) is mandatory. It prohibits the disclosure of certain business information where the business will suffer harm by disclosing information in response to an access to information request.

[60] For the reasons noted by Cromwell J. in *Merck*, the interpretation of subsection 24 (1) requires that I balance the right of access to information against the right of businesses not to suffer harm as a result of a disclosure of their sensitive business information. To do so, the words in this subsection must be interpreted broadly enough to achieve the proper balance.

[61] “Third party” is defined as “in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body;” In this case, the outfitters are third parties.

[62] The information refused is:

- a. for Applicant A, harvest data from game management subzones for resident hunters and non-resident special guided hunters for each of moose, caribou, bison, wolf, black bear and grizzly bear between April 2009 and March 2017; and

¹² *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC), at para. 21.

¹³ *Interpretation Act*, RSY 2002, c125, at section 10.

¹⁴ Paragraph 1 (1)(a) of the ATIPP Act.

¹⁵ Paragraph 1 (1)(c) of the ATIPP Act.

- b. for Applicant B, non-resident hunter harvest data from Outfitter 1 and Outfitter 2 for each of sheep, caribou and moose between April 2017 and March 2018.

[63] Harvest data is the kill by each hunter. The specific harvest data sought by the Applicants is for kills of big game, of the species noted, within the areas identified.

[64] For Applicant A, the harvest data sought is the total number of the big game animals specified that were harvested in all game management subzones by resident hunters and non-resident special guided hunters. The Department submitted that if Applicant A were provided this information, they would, together with publicly available information, be able to identify the number of big game animals harvested per year by each of the outfitters in their respective concession areas.

[65] Each year, the Department publishes the total number of big game animals by species that are taken by resident and non-resident hunters by game management zone (GMZ).¹⁶ Non-resident hunters are hunters guided by outfitters or by special guides. There are a total of 11 GMZs. Within each GMZ are several game management subzones (GMSZ). There are a total of 20 outfitter concessions. In GMZ 2, there are six outfitter concessions that are completely within the boundaries of this GMZ. In GMZ 4, there are four outfitter concessions that are completely within the boundaries of this GMZ. In GMZ 5, there are four outfitter concessions that are completely within the boundaries of this GMZ. In GMZs 7 to 11, there are two that are completely within GMZs 7 and 11, but the rest span over two GMZs.

[66] If the Department provided the number of big game animals by species that are taken by resident and non-resident special guided hunters by GMSZ to Applicant A, then it is my view that Applicant A would not be able to identify the number of big game animals harvested by the outfitters within their respective concession areas. The reason for this follows.

[67] The Department only releases the total number of each species harvested by resident and non-resident hunters. If Applicant A receives the harvest of moose by GMSZ, they will only know the amount and location of moose harvested by the resident and non-resident special guided hunters. Applicant A could not use this information to determine the number of harvests within each concession area because there are multiple outfitting concessions within each GMZ.

¹⁶ It is not clear when this practice began. The evidence provided indicates the practice dates back to at least 2010 when the 2010-11 Yukon Hunting Regulations Summary published the harvest data from August 1, 2009 to July 31, 2010.

[68] For example, between August 1, 2009 and July 31, 2010, the Department publicly stated that a total of 179 moose were harvested in GMZ 4.¹⁷ Residents harvested 81 and non-residents 98.

[69] There are four outfitting concession areas within GMZ 4. They are concessions 7, 8, 9 and 14. If Applicant A learns that non-resident special guided hunters harvested eight moose in outfitting concession 7, three in 8, seven in 9, and five in 14, then Applicant A would know that 23 moose were harvested by non-resident special guided hunters in GMZ 4, in addition to the GMSZ of the harvest. The total number of moose harvested for the period within the GMZ by non-resident hunters is 98. Using the information received about the non-resident special guided hunters, Applicant A could determine that 75 moose were harvested in the GMZ by outfitter guided hunters.

[70] However, there are four concession areas within GMZ 4. Applicant A would not be able to determine how many moose were harvested per concession area. If Applicant A also learned the number of big game animals harvested by resident hunters within each concession area, then they would still not know the number harvested by non-resident outfitter guided hunters within each concession area.

[71] All GMZs have multiple concession areas within their boundaries. Where there are fewer than four, they span GMZs or have multiple GMSZs within the GMZ that are outside the concession areas where hunting is permitted. This fact prevents Applicant A from determining the number of harvests per concession area.

[72] Having reviewed the evidence, I am satisfied that Applicant A would not be able to identify the number of big game animals harvested within each concession by outfitters if Applicant A is provided with the information requested.

[73] For Applicant B, the harvest data sought is the total number of big game animals harvested by non-resident hunters within each concession area of Outfitter 1 and Outfitter 2. The total would include big game animals harvested by non-resident special guided hunters and outfitter guided hunters. Because the information sought by Applicant B includes big game animals harvested by both the special guided and outfitter guided hunters, Applicant B would be unable to determine with certainty the number of big game animals harvested by each of Outfitter 1 and Outfitter 2 within their respective concessions. Because non-resident special guided hunters harvest smaller numbers of big game animals than outfitter guided hunters, in

¹⁷ This is the amount of moose harvested between August 1, 2009 to July 31, 2010 as published in the 2010-11 Yukon Hunting Regulations Summary at p. 16.

my view, Applicant B would only be able to estimate the number of big game animals harvested within each concession area by the outfitter guided hunters.

Does the harvest data qualify as trade secrets or commercial, financial, scientific or technical information of a third party?

Trade Secret

[74] In the ATIPP Act 'trade secret' is defined as follows.

"trade secret" means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that

(a) is used, or may be used, in business or for any commercial advantage,

(b) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,

(c) is the subject of reasonable efforts to prevent it from becoming generally known, and

(d) the disclosure of which would result in harm or improper benefit

[75] The Department submitted that the locations of successful hunts are considered a trade secret of outfitters. It stated that "[t]he rate of successful hunts represents a commercial advantage consistent with the definition of trade secret that if made public could compromise that competitive advantage of each of these outfitters."

[76] Outfitter 1 did not specify the information within the submission that suggests revealing the harvest data sought by the Applicants will reveal a trade secret. The Outfitter, however, indicated in its submission that it has spent "nearly twenty years" learning "where, when and how many sheep, moose, caribou may be found and harvested in my concession." The Outfitter stated that "[t]o give any or all of the requested information would give the applicant the knowledge, ability to know where and when to hunt within my concession or the ability to share our harvest statistics with any resident hunter located in the Yukon." The Outfitter also stated that "I have years of personal and corporate knowledge that has provided me information on game movement and harvest that was obtained with personal experience and at great cost of time, resources and energy."

[77] Outfitter 2 submitted the following in support of its position that disclosing the harvest data to the Applicants will reveal a trade secret.

My trade secrets are the methods and process that I carry out my hunts that involve my own learned techniques and methods from years of experience. These methods can be devolved from learning and tracking my quotas learning the sites or areas, and success with the hunts. If the data is provided by the department the customer information may be discovered or determined.

...

If my quotas or harvest information are provided for the specific animal in my concessions, and if also by location, it allows the applicant to access my technical information that I acquired by knowledge and experience at often great expense and years of experience in knowing the habitat, game trails and resident areas...Release of the Quotas and Harvest info at the concession level will have the potential of encroachment or migration into specific areas of my concession if they believe that the information provided would allow resident success. That directly would harm my income personally but also would interfere with my business trade secrets of knowing the game positioning and timing based on knowledge or experience...

[78] Both Applicants take the position that the information sought would not reveal a trade secret.

[79] Both Outfitters and the Department appear to be of the view that revealing the total number of harvested big game animals by non-resident outfitter guided hunters by concession area will reveal methods or practices used by the Outfitters for hunting big game. I disagree. The Applicants are seeking total numbers harvested. If they were seeking the specific location and timing of kills, then it may be possible to infer from this the particular methods or practices used for hunting. However, the Applicants are not requesting this information.

[80] The information sought by Applicant A, as previously indicated, will only reveal the GMSZ where non-resident special guided hunters and resident hunters harvested certain big game animals over a period of eight years. Applicant A will not be able to use this information to learn the specific location of any of the big game animals harvested by outfitters, including whether they were harvested in a specific concession area. In short, trade secrets of the outfitters would not be revealed to Applicant A if the information sought were provided.

[81] The information sought by Applicant B, however, is different. As indicated, if the information sought by Applicant B is provided, then Applicant B will be able to estimate the number of big game animals harvested within Outfitter 1's and Outfitter 2's concession areas. Knowledge of this information by the public could be used for a commercial advantage by other outfitters and by those seeking to acquire a concession area to reduce the price for acquisition of the assets of an outfitter on transfer. Therein, it derives independent economic value from

the information being generally not known to the public or to other persons who can obtain economic value from its disclosure or use. Further, I am satisfied, based on the evidence of the Department and Outfitter 1 and Outfitter 2, that reasonable efforts have been made to date to prevent knowledge of big game animals harvested within concession areas from being generally known and if disclosed could result in harm or improper benefit.

[82] Based on the foregoing, I find that the information sought by Applicant B, if disclosed, would reveal the trade secrets of Outfitter 1 and 2.

Commercial Information

[83] In Inquiry Report ATP13-037AR, I found that ‘commercial information’ in this provision means “information that relates to the buying and selling or exchange of merchandise or services and includes a third party’s associations, history, references, bonding and insurance policies...”¹⁸

[84] The Department stated that “the rate of success in a particular area indicates the commercial value of a concession” and that it has been approached in the past for this data by individuals interested in purchasing a concession area. It added that “Outfitter concessions are a highly sought after commodity in the territory and may be sold without government approval. Access to harvesting information for either of these outfitters could provide a potential purchaser with an undue advantage during any subsequent negotiations and a subsequent financial loss to the owners.”

[85] Outfitters 1 and 2 both provided evidence about the commercial information that would be revealed to the Applicants if total harvest data reported by each Outfitter were revealed to the Applicants.

[86] Both Applicants hold the view that the information sought would not reveal commercial information.

[87] As no harvest information of outfitters will be revealed to Applicant A, I find that disclosing the information sought by Applicant A to Applicant A will not reveal commercial information. However, the information sought by Applicant B, if disclosed, will enable them to estimate the number of big game animals, of the species identified, harvested by outfitter guided hunters in Outfitter 1’s and Outfitter 2’s concession areas. Revealing this information has the potential to create a competitive disadvantage for the Outfitter with a lower harvest rate. Given this, I am of the view disclosing the information sought by Applicant B to Applicant B will reveal commercial information about Outfitter 1 and Outfitter 2.

¹⁸ At para 93.

Financial Information

[88] In Inquiry Report ATP13-037AR, I found that ‘financial information’ means “information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.”¹⁹

[89] No financial information of outfitters will be revealed to Applicant A given that they will not know the number of big game animals harvested by concession. However, Applicant B will be able to estimate the number of harvests of big game animals within concessions held by Outfitter 1 and Outfitter 2. If Applicant B can use this information to determine specific financial information about either of these Outfitters, then disclosing it would reveal financial information about Outfitter 1 and 2.

[90] The Department submitted that “[a] report prepared for Yukon Government Economic Development Department and published in April 2016 titled, “Yukon Outfitters – Social-Economic Profile and Situational Analysis,” notes that the “Guided big game hunts in Yukon range from about US\$10,000 for a barren ground caribou hunt to sheep hunts that cost US\$40,000 or more. Based on outfitters survey data, the average guided hunter is paid about US\$20,000 for their hunt...” This report is accessible on the Department’s public website.

[91] Outfitter 1 did not provide any evidence indicating that disclosing the information sought by the Applicants to each of them would reveal financial information.

[92] Outfitter 2 submitted the following.

My personal and corporate, commercial and financial information can be determined as the price per hunt is generally known within certain range by species and accessible by the public. This directly relates to the quota and harvest numbers by species in calculation of value of that concession.

Therefore by releasing the quota numbers which provides my potential income and then especially the harvest data that indirectly provides the direct income of my company, as I as the outfitter control all commercial hunting in that concession area, will allow the applicant to determine within reasonable time limits my financial and corporate income. Thus must be refused.

[93] The Applicants both submitted that financial information of the outfitters will not be revealed if they are provided with the information sought.

¹⁹ At para. 94.

[94] Some outfitters in Yukon publish their prices per hunt online. Many do not. Outfitter 1 and Outfitter 2 do not publish their prices per hunt on their websites.

[95] The position of the Department and the Outfitters is that if Applicant B is able to estimate the harvest of big game animals harvested within the concession areas of Outfitter 1 and Outfitter 2, they will be able to estimate the amount of money the Outfitters will earn for big game animals harvested in their concessions. However, in my view, Applicant B will be unable to estimate the amount of money earned by each Outfitter for the specified period. This is because Applicant B will only know an approximate figure based on the number of big game animals harvested x \$US20,000. They will not know the amount of money earned for hunters who failed to harvest an animal, the amount of money earned for packages where costs are greater depending on the package, nor the amount earned for companions of hunters. Given this, the financial information that will be learned by Applicant B will not reveal financial information under subparagraph 24 (1)(a)(ii) about Outfitter 1 and Outfitter 2 because it is not specific enough to qualify as such.

[96] For the foregoing reasons, I find that disclosing the information sought by Applicant A and Applicant B would not reveal financial information about an outfitter. I also find that the information does not qualify as labour relations, scientific or technical information.

[97] Because the information sought by Applicant A will not reveal any of the information identified in subparagraphs 24 (1)(a)(i) or (ii), I find that subsection 24 (1) does not apply to the information requested by Applicant A.

[98] Given that I determined that disclosing the information sought by Applicant B would reveal trade secrets and commercial information about Outfitter 1 and Outfitter 2, I will go on to consider whether the information sought by Applicant B about the harvests within these concession areas was supplied, implicitly or explicitly, in confidence as is required by the second part of the test set out in paragraph 24 (1)(b).

Paragraph 24 (1)(b)

Was the information sought by Applicant B supplied, implicitly or explicitly, in confidence by the non-resident hunters?

[99] To meet this part of the test, the Department will first need to establish that the harvest data for sheep, caribou and moose it collected from non-resident hunters who harvested these big game animals in the concession areas of Outfitter 1 and Outfitter 2 from April 1, 2017 to March 31, 2018 was 'supplied' to them by the Outfitters and special guides. Next it will need to establish that this information was supplied 'implicitly or explicitly in confidence'.

Was the harvest data sought by Applicant B supplied to the Department?

[100] In Inquiry Report ATP13-37AR, I determined that for the purposes of paragraph 24 (1)(b), “supply” means to “provide” or “furnish.”²⁰

[101] Non-resident special guided hunters and outfitter guided hunters are required to report their harvest data on a form entitled, “Outfitter/Chief Guide/Hunter Report Harvest Fee Receipt and Wildlife Export Permit”, form YG(637) (Form). The Form lists every species of big game. For each hunter, they must record their seal #, specific location of the harvest, the GMSZ of the harvest, and sex or number of the animal. The guide is required to initial beside this information. Subsection 54 (1) of the Regulation requires an outfitter or special guide to “not later than ten days after the end of each month in which they outfitted or guided, submit to a conservation officer the information respecting every hunter that they outfitted or guided that month that is required to complete the form determined by the Minister.” The Form is the one accepted by the Minister and was in use between April 1, 2017 and March 31, 2018.²¹ The information sought by Applicant B would be derived from the Forms.

[102] Based on the foregoing, I am satisfied that the harvest data sought by Applicant B was supplied to the Department by the special guides and Outfitters for the non-resident hunters they guided in the Outfitter 1 and Outfitter 2 concession areas, and I find this occurred.

Was the harvest data sought by Applicant B supplied to the Department ‘implicitly or explicitly in confidence’?

[103] As indicated, non-resident hunters are required by the Regulation to complete the Form and the special guide or Outfitter that guided them is required to submit the Form to the conservation officer.²² Whether a legal requirement to report information to government can be considered to be ‘supplied in confidence’ has been considered by the courts as well as by Information and Privacy Commissioners in Canada.

[104] In *Chesal v. Attorney General of Nova Scotia (Chesal)*,²³ Bateman, J.A., writing for the majority of the Nova Scotia Court of Appeal, considered the meaning of the term “received in confidence” after an applicant under Nova Scotia’s *Freedom of Information and Protection of Privacy Act* (NS FIPPA) was denied access to an Audit Report containing a review of Unama’ki Tribal Police (UTP) on the basis that the public body applied an exception under paragraph 12

²⁰ ATP13-37AR, Department of Community Services, August 11, 2014, at para 103.

²¹ Letter dated June 24, 2019 containing additional evidence provided by the Department in response to the request for same by the IPC, at p.1.

²² Subsection 54 (1) of the Regulation.

²³ 2003 NSCA 124.

(1)(b) of NS FIPPA. The Audit Report was determined to be completed under the auspices of Nova Scotia's *Police Act*. Paragraph 12 (1)(b) states as follows.

12 (1) the head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(b) reveal information received in confidence from a government body, or organization listed in clause (a) or their agencies unless the government, body, organization or its agency consents to the disclosure or makes the information public.

[105] In interpreting the meaning of this paragraph, Bateman considered a decision by British Columbia's Information and Privacy Commissioner (BC IPC), Order 331-1999.²⁴ Bateman stated the following about the BC IPC's approach to interpreting a similar provision in British Columbia's *Freedom of Information and Protection of Privacy Act* (BC FIPPA).

The FOIPOP Act refers to confidential information in a number of sections (ss. 19C(b), 20(2)(f), 20(5), and 21(1)(b)). Section 12(b) applies to information "received" in confidence, while all other sections describe the information as "provided" or "supplied" in confidence. In Order 331-1999...the Privacy Commissioner considered the meaning of "received" in confidence, as contrasted with "supplied" or "provided" in confidence in similarly worded provisions of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, s. 16(1)(b). He concluded that "received" in confidence requires that there be evidence of an expectation of confidentiality on the part of both the supplier and the receiver of the information. I agree.

The Commissioner developed a helpful list of factors to aid in determining whether information was received in confidence.²⁵

[106] Bateman then set out the factors. Among them is the following.

4. Was the record supplied voluntarily or was the supply compulsory? Compulsory supply will not ordinarily be confidential, but in some cases there may be indications in legislation relevant to the compulsory supply that establish confidentiality. (The relevant legislation may even expressly state that such information is deemed to have been supplied in confidence.)²⁶

²⁴ Vancouver Police Board's Refusal to Disclose Complaint-Related Records, Re, 1999 CanLII 4253 (BC IPC).

²⁵ *Ibid.*, at para 71.

²⁶ *Ibid.*, at para 72.

[107] The argument put forward by the Respondent in the case was that “they understood that the Audit Report was conducted in confidence” with “[e]ach page of the Audit report...stamped “Confidential”. The Respondent submitted that “[t]his evidence...is sufficient to trigger s. 12(1)(b) of the FOIPOP Act...”²⁷

[108] In deciding whether the Audit Report was received in confidence, Bateman indicated that it was not enough for there to be a subjective belief that information was received in confidence, there must be “evidence that such a belief was, objectively, warranted.”²⁸ She noted that in this regard that in Order 01-13,²⁹ the BC IPC was satisfied with “evidence of both the manner of collection of the data, which spoke of confidentiality, and the evidence of verbal and written assurances of confidentiality” regarding a voluntary survey involving First Nations in British Columbia where the BC IPC was examining whether the survey was received in confidence.³⁰

[109] Bateman applied the factors and determined that the Audit Report was not received in confidence. In her reasons, she noted the following.

- Nothing in the *Police Act* “states or implies that this kind of information gathered by the Province in fulfillment of its duty is “received” in confidence.”³¹
- The tripartite agreement governing the operations of the UTP also did not “expressly [provide] for confidentiality of the information received by the Province for the purpose of assessing the UTP.”³²
- “...the information for the Audit Report by the Board and the members of the UTP was not expressly compelled...its supply was effectively compulsory...”³³
- “There is no evidence that the government of Nova Scotia understood that the Audit Report or information supplied would be confidential. Aside from the appearance of the word “Confidential” on the Audit Report, the actions of the parties do not provide objective evidence of an expectation of confidentiality.”³⁴

²⁷ *Ibid.*, at para. 66.

²⁸ *Ibid.*, at para 67.

²⁹ British Columbia (Ministry of Environment, Lands and Parks), [2001] B.C.I.P.C.D No. 14 (Q.L.).

³⁰ *Ibid.*, at para 69.

³¹ *Ibid.* at para 73.

³² *Ibid.*, at para. 74.

³³ *Ibid.*, at para. 77.

³⁴ *Ibid.* at para. 78.

[110] In Order F17-28,³⁵ Carol Whittome, an adjudicator for the Office of the BC IPC, considered whether statistical information in a report containing a traffic impact assessment (TIA) prepared by Tsawwassen First Nation was ‘received’ in confidence by the Minister as is required by subsection 16 (b) of British Columbia’s *Freedom of Information and Protection of Privacy Act* (BC FIPPA). Whittome identified therein that the TIA was prepared in accordance with the requirement of British Columbia’s (BC) *Transportation Act*.

[111] After considering the factors in Order 331-1999,³⁶ Whittome found that the report was not received in confidence by the Minister. In so doing, she noted the following.

...the supply of the statistical information to the Ministry...was compulsory, not voluntary. “Where the supply of information is compulsory, this indicates that the recipient alone is in control of any conditions for its receipt. The person supplying the information would have little to no control or ability to impose conditions on its receipt, including the condition that it be kept confidential by the recipient.”³⁷

[Emphasis mine]

[112] On weighting the factors, Whittome stated, “I give considerable weight to the nature of the information, as well as the fact that the TFN was required to provide the statistical information at issue in order to obtain the necessary approval from the Ministry.”³⁸

[113] The issue in this Inquiry is not about the receipt of confidential information. Rather, it is about whether the harvest information supplied by the Outfitters and special guides was ‘supplied’ to the Department ‘in confidence’ as per paragraph 24 (1)(b). The difference between ‘received in confidence’ and ‘supplied in confidence’ was addressed by former BC IPC, David Loukidelis, in Order 331-1999, in which he stated the following.³⁹

...use of the word “supplied” in ss. 21 and 22 - which deals with information provided to a public body by a non-public body third party – focuses more on whether the supplier of the information expected it to be kept confidential. By contrast, I think s. 16 focuses on the intention of both the receiver and the supplier of the information. This does not mean the intention or understanding of the recipient of information is irrelevant to ss. 21 or 22. It simply means that the Legislature intended, to my mind, that the focus under those two sections should be more on the intention or expectation of the information supplier.

³⁵ Ministry of Transportation and Infrastructure, May 10, 2017, 2017 BCIPC 30.

³⁶ The same factors considered by Bateman in Chesal.

³⁷ *Ibid.*, at para 43.

³⁸ *Ibid.*, at para 44.

³⁹ 1999 CanLII 4253 (BC IPC).

[114] In Order 00-10,⁴⁰ BC IPC Loukidelis considered whether the sales figures of two breweries operating in BC were exempt from disclosure under subsection 21 (1) of BC FIPPA. This subsection has the same wording as subsection 24 (1) of the ATIPP Act.

[115] Loukidelis found that the information was supplied by the breweries in confidence based on a provision of BC's *Liquor Act* that deemed it as such. The reasons for his findings are below.

The next element of the s. 21(1) test is the requirement, found in s. 21(1)(b), that the information must be information "that is supplied, implicitly or explicitly, in confidence" to the public body.

...

The LDB [(Liquor Distribution Branch)], Labatt and Molson each pointed out that s. 36 of the Liquor Distribution Act addresses the confidential supply issue. Here is s. 36:

For the purposes of section 21(1)(b) of the Freedom of Information and Protection of Privacy Act, information in the custody or under the control of the branch [the LDB], whether or not supplied to the branch, is deemed to be supplied to the branch implicitly or explicitly in confidence, if the information concerns the branch's

a) acquisition of liquor from a manufacturer, manufacturer's agent, distributor, authorized importer of liquor or other person who supplies liquor to the branch, or

b) sale of liquor acquired by the branch from a person referred to in paragraph (a).

This provision clearly establishes that information described in s. 36 is, whether or not supplied to the LDB, deemed to have been supplied to the LDB in confidence for the purposes of s. 21(1). This amendment to the Liquor Distribution Act may have been designed to overcome the fact that a public body may generate sensitive commercial or financial data about a third party that are therefore not "supplied" by the third party to the public body.

Molson pointed out that Brewers Distributor Ltd., a company owned by Molson and Labatt, supplies beer to the LDB for Labatt and Molson. Molson said that

⁴⁰ Liquor Distribution Branch Data on Annual Beer Sales, Re, 2000 CanLII 11042 (BC IPC).

data supplied by Brewer's Distributor Ltd. to the LDB are used to generate the annual sales revenue figures for Labatt and Molson that are in issue here. The LDB, Labatt and Molson all argued that s. 36 of the Liquor Distribution Act deems this information to have been supplied to the LDB in confidence. Molson also supplied affidavit evidence to establish that the information is in fact supplied and that it is supplied in confidence. In my view, s. 36 is, in this case, a sufficient answer and on that basis I find that the information in issue here satisfies the requirements of s. 21(1)(b).⁴¹

[116] In Report A-2013-014,⁴² Newfoundland and Labrador's former Information and Privacy Commissioner (NL IPC), Ed Ring, considered whether information about pesticides used by pesticide licenced operators (PLO) should be withheld under subsection 27 (1) of Newfoundland and Labrador's *Access to Information and Protection of Privacy Act* (NL ATIPPA). This provision is the same as subsection 24 (1) of the ATIPP Act. In finding that the information was not supplied in confidence by the PLOs to the Department of Environment and Conservation, he stated the following.

The Department in its submission indicated that in its view the information requested was not supplied in confidence but provided in an application for a Pesticide Operator Licence in accordance with the governing legislation. The Department pointed out that applicants for a Pesticide Operator Licence must provide the Department with the name of the pesticide it intends to use. This information would then be included in Appendix A of the Terms and Conditions of the licence.

In Air Atonabee Ltd. v. Canada (Minister of Transport),⁴³ Justice MacKay stated at paragraph 42 with respect to confidentiality of information:

... whether information is confidential will depend upon its content, its purposes and the circumstances in which it is compiled and communicated, namely:

a) that the content of the record be such that the information it contains is not available from sources otherwise accessible by the public or that could not be obtained by observation or independent study by a member of the public acting on his own,

⁴¹ *Ibid.*, at section 3.6 Supply of Information in Confidence.

⁴² Department of Environment and Conservation, October 2, 2013, 2013 CanLII 67011 (NL IPC).

⁴³ Cited in the Report as "*Air Atonabee Ltd. v. Canada (Minister of Transport)* (1989), 27 F.T.R. 194, at 206 (F.C.T.D.)"

b) that the information originate and be communicated in a reasonable expectation of confidence that it will not be disclosed, and

c) that the information be communicated, whether required by law or supplied gratuitously, in a relationship between government and the party supplying it that is either a fiduciary relationship or one that is not contrary to the public interest, and which relationship will be fostered for public benefit by confidential communication.

Given that the Third Party was required by law to provide the names of the pesticides it intended to use as a condition for obtaining a licence to use those pesticides, such information cannot be said to have been, in the words of Justice MacKay in Air Atonabee Ltd., “communicated in a reasonable expectation of confidence that it will not be disclosed.”

In these circumstances, I have no alternative but to find that the information was not supplied in confidence to the Department. Therefore, the Third Party has failed to meet this part of the three-part test and section 27(1) is not available to deny access to the requested information.

[117] In Review Report 043-2015,⁴⁴ Saskatchewan’s Information and Privacy Commissioner, Ronald Kruzeniski (SK IPC), considered whether a request for a third party business’s water and air quality compliance reports for 2012 and 2013 (Reports) was exempt from disclosure under subsection 19 (1)(b) of Saskatchewan’s *Freedom of Information and Protection of Privacy Act* (SK FIPPA). It states as follows.

Subject to Part V and this section, a head shall refuse to give access to a record that contains:

(b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence,

[118] In finding that some of the information in the Reports was not supplied in confidence to the Ministry of Environment, the SK IPC stated the following.

In the past, my office has stated that information supplied in confidence means that the Third Party has stipulated how the information can be disseminated. The expectation of confidentiality must be reasonable and must have an objective basis. Whether the information is confidential will depend upon its

⁴⁴ Ministry of Environment, May 25, 2015, 2015 CanLII 29849 (SK IPC).

content, its purposes, and the circumstances in which it was compiled or communicated.

The Third Party's submission indicates that the information was supplied to the Ministry in implicit confidence. However, first I must consider whether the information was a "compulsory supply", or in other words, I must determine if the Third Party was required to supply it to the Ministry.

In the past, my office has stated that compulsory supply means that a statute requires disclosure thereby no voluntariness is said to be present. Compulsory supply of information will not ordinarily qualify as confidential, but in some cases there may be indications in the legislation relevant to the compulsory supply that establish confidentiality (the relevant legislation may even expressly state that such information is deemed to have been supplied in confidence).⁴⁵

[119] The SK IPC then evaluated the Reports and determined that the third party submitted them to the Ministry as part of its approval to operate. This required it to submit reports of a similar nature to the Ministry annually. The SK IPC then noted that the Reports contained no confidentiality provisions.⁴⁶

[120] Next, the SK IPC identified that the third party's approval to operate was authorized by Saskatchewan's *Environmental Management and Protection Act, 2002, Clean Air Act, and Hazardous Substances and Waste Dangerous Goods Regulations*. He also identified that the third party's permit to operate was authorized by Saskatchewan's *Environmental Management and Protection Act, 2002, Water Regulations, and Clean Air Act*. After reviewing these laws, he determined that none had any confidentiality provisions.⁴⁷

[121] For the information in the Report that he determined was required by the Ministry or a 'compulsory supply', he stated the following.

As there are no confidentiality provisions in the above noted legislation, the portions of the record that was required by the Ministry would qualify as compulsory supply and cannot be covered by subsection 19(1)(b) of FOIP.⁴⁸

[122] The Department's position in regards to this part of paragraph 24 (1)(b) is as follows.

⁴⁵ *Ibid.*, at paras. 16 to 18.

⁴⁶ *Ibid.*, at paras. 19 and 20.

⁴⁷ *Ibid.*, at para. 20.

⁴⁸ *Ibid.*, at para. 23.

- a. The notice appearing on the bottom of the Form used by the hunters is evidence that the information supplied by the Outfitters and special guides was supplied in confidence. The notice states:

Personal information contained on this form is collected under the Wildlife Act and associated regulations and will be used by the Department of Environment for research, statistical and enforcement purposes.

- b. In regards to the notice, the Department stated:

This clearly states the purpose for which this information was collected and the principal of [Outfitter 2] in a 3rd party response to another similar inquiry in April 2017 clearly indicated that they deemed that to guarantee confidentiality of all information provided. That interpretation was reinforced in the same letter when they indicated that their own request for similar information in 2012 was refused, citing the privacy provisions of the act.

- c. The Department also indicated that it has denied informal and formal requests for access to information about harvest quotas in outfitting concession areas historically because “it is considered commercial information of the concession holder” which it added “infers that the information supplied will be treated as confidential...”

[123] Outfitter 1 acknowledged in its submissions that the information provided on the Form is a legal obligation and providing it to the Department is mandatory. It added that “the information must be held confidential between myself and the Department...”

[124] Outfitter 2 indicated the following in its submissions about whether the information on the Forms was supplied in confidence.

I have and will continue to oppose the Department (s) providing this data or information requested under the ATIPP which is in deference to the confidentiality agreement and policy for which it is supplied to the department.

[125] Its submissions also indicated that:

If the Department breaches its commitments when I report my harvest and negotiate my quotas that all will be held in confidence and only shared with other Governments such as First Nation or Federal by agreements or under law my business will be damaged.

[126] Applicant B did not make a specific submission about whether the information was supplied in confidence.

[127] It is clear from the evidence that there is a subjective belief by the Department and Outfitter 1 and Outfitter 2 that the information they supply on the Form is confidential. Other than the fact that the Department has in the past refused to provide this information informally or in response to access to information requests based on provisions of the ATIPP Act, there is no objective evidence to support that the Outfitters and special guides supplied this information in confidence, either implicitly or explicitly, to the Department. My reasons for this conclusion follow.

- a. The notice appearing on the Form is required by subsection 30 (2) of the ATIPP Act. This provision requires public bodies subject to the ATIPP Act to tell individuals from whom it collects personal information about the purpose of the collection, the authority for collection and an individual they can contact about the collection.⁴⁹ This provision does not amount to a notice about confidentiality. Its purpose is to provide individuals with a level of control over their personal information by informing them of these facts. Personal information collected by the Department may be disclosed for a number of reasons including if it is requested by an applicant and it is determined that disclosure would not be an unreasonable invasion of an individual's personal privacy. The Department is also authorized to disclose personal information under Part 3 for a number of purposes without having received an access to information request.
- b. Subsection 24 (1) requires all three parts of this subsection, paragraphs (a), (b) and (c), to be met. It is not enough for information to be found to be 'commercial' in nature as the Department alludes in its submissions. It must also be found to be supplied implicitly or explicitly in confidence and that one of the circumstances will occur in paragraph 24 (1)(c) if the information is disclosed to an applicant.
- c. The information supplied by outfitters and special guides on the Form is compulsory. Hunters are required to record the information about their harvests on the Form, and outfitters and special guides must provide it to the Department. This is required by the *Wildlife Act* and the Regulations.⁵⁰ The compulsory requirement to provide

⁴⁹ I note here that the notice on the Form states, "Personal information contained on this form is collected under the *Wildlife Act* and associated Regulations and will be used by the Department of Environment for research, statistical and enforcement purposes. For further information, contact the Department of Environment at [phone numbers] within Yukon.

⁵⁰ In the case of outfitting concessions subsection 50 (4) and 54 (3) of the *Wildlife Act* authorizes the Minister to impose conditions on an outfitting concession licence. The requirement to report harvests within an outfitter's concession is one of those conditions. Section 195 of the *Wildlife Act* authorizes the Minister to determine forms that must be submitted under the Act. YG 637 is the form determined by the Minister for the reporting of big game harvest information by hunters to the Department. Subsection 54 (1) of the Regulation establishes the

the information means that suppliers cannot impose conditions on it. Given this, they cannot have a reasonable expectation that any information supplied on the Form will be held in confidence by the Department.

- d. There are no indicators in the *Wildlife Act* or Regulation that the Department will or is obligated in any way to keep the information supplied on the Form confidential.

[128] In order to strike the right balance between Applicant B's right to access information in the custody or control of the Department against the right of Outfitter 1 and Outfitter 2 not to suffer harm from disclosure of their sensitive business information to the Applicant, there must be more than just a subjective belief that the information supplied to the Department was done so on a confidential basis. There must also be objective evidence that when it was supplied there was a reasonable expectation on the part of the Outfitters, either implicitly or explicitly, that the Department would keep it confidential.

[129] The objective evidence here suggests there was no basis on which these Outfitters, or any other guide of non-resident hunters, could reasonably expect to impose confidential conditions on the supply given that the supply is compulsory under the *Wildlife Act* and Regulations, and neither require the Department keep the information confidential. The reason for this is clear upon examination of these laws. The Department may need to disclose this information for a number of purposes to a third party, including for the purposes of wildlife management or enforcement.

[130] Based on the foregoing, I find that the information sought by Applicant B was not supplied to the Department explicitly or implicitly in confidence and that, as a result, the requirements of paragraph 24 (1)(b) are not met.

[131] Because all three parts of subsection 24 (1) must be met for this subsection to apply, I find that this subsection does not apply to the information requested by Applicant B.

[132] The Department submitted that disclosure of the information requested by Applicant A and B will result in an unreasonable invasion of personal privacy of the individuals who hold outfitting concessions. Specifically, it is relying on subsection 25 (1) and paragraph 25 (2)(f) to refuse the information. Given this, I will go on to determine if these provisions apply to the information sought by the Applicants.

Is the Department required by subsection 25 (1) together with paragraph 25 (2)(f) to refuse to provide the Applicants with the information they requested?

requirement of the hunters guided by an outfitter or special guide to complete the Form and requires the outfitter or special guide, as applicable, to submit the Form to the conservation officer.

[133] Subsection 25 (1) is a mandatory exception. If it applies to the information sought by the Applicants, then the Department has no discretion about whether to disclose it; it must not.

'Personal information'

[134] For subsection 25 (1) to apply, the information requested by the Applicants must be personal information. 'Personal information' is defined in the ATIPP Act as "recorded information about an identifiable individual." Below this definition is a non-exhaustive list of personal information, including information about an individual's financial or employment history.

[135] The information sought by Applicant A is the total number of the big game animals specified (*i.e.* moose, caribou, bison, wolf, black bear and grizzly bear) that were harvested between April 2009 and March 2017 by resident hunters and non-resident special guided hunters by GMSZ. Applicant B is seeking the total number of big game animals specified (*i.e.* sheep, caribou and moose) harvested by non-resident hunters within the concession areas held by Outfitter 1 and Outfitter 2.

Is the information sought by the Applicants 'personal information'?

[136] The Department submitted that if the information requested by the Applicants were provided, then it would reveal personal information about the individuals who hold concessions (I/C Holders), namely their financial information, including income, assets, net worth, and their employment history. In support of this position, the Department indicated that some I/C Holders operate their outfitting businesses through corporations (Corporate Outfitters) and that any information revealed about a Corporate Outfitter also reveals personal information about an I/C Holder.

[137] An outfitting concession must be held by an individual.⁵¹ Despite this, subsection 38 (2) of the *Wildlife Act* authorizes the Minister to "issue a permit to the outfitter and to an eligible corporation...authorizing the outfitter and the corporation, in the name of the corporation" to guide big game hunters within their concession area. 'Eligible corporation' is defined as "a corporation that is in good standing under the *Business Corporations Act*.⁵² I note that subsection 38 (7) makes I/C Holders who operate their outfitting operation through a corporation personally liable for contraventions of the *Wildlife Act* and regulations.

[138] The evidence provided by the Department confirmed that for every active concession area held by an I/C Holder between the dates of April 1, 2009 until March 31, 2017, a permit was issued under subsection 38 (2). This means that any hunting for big game animals that

⁵¹ Subsection 50 (1) of the *Wildlife Act*.

⁵² Subsection 38 (4) together with its paragraph (a) of the *Wildlife Act*.

occurred within a concession area by an outfitter-guided hunter in Yukon during that period was done so in the name of a corporation.

[139] The information on the Form submitted by outfitters about the hunters, including that they harvested a big game animal, and the information about the guide would qualify as these individuals' personal information. However, anonymous information about big game animals harvested within a concession area by GMZ or GMSZ and by outfitter-guided hunters is information about a corporation because all these hunts occurred in the name of a corporation.

[140] The Department submitted that the harvest information requested by the Applicants would reveal personal information about the I/C Holders. It indicated that, in certain cases, information about a corporation could reveal information about an individual. In support of this position, it cited a decision by the Privacy Commissioner of Canada, PIPEDA Case Summary #2003-181, wherein it was found that the banking information of a small business owner was so inextricably linked with that of the business owner's personal information that revealing the information of the business revealed personal information about the business owner.

[141] The facts in #2003-181 were as follows:

- a. A bank was involved in a dispute with a client, a small business owner, regarding his corporate account. To address the matter, the bank retained outside legal counsel to represent its interests. The bank then sent the corporate account information of the small business owner to its lawyer. The bank claimed the information sent was not personal information about the business owner as it was about his corporate account. The business owner alleged a breach of the *Personal Information Protection and Electronic Documents Act* occurred when the bank disclosed the information to the lawyer because his view was that his corporate banking and personal information were tied together such that disclosure of the information to the lawyer was a disclosure of his personal information. The information disclosed consisted of bank documents that: listed the corporate account in the business's name; identified the complainant's and his wife's names; identified that the complainant's house was used as collateral on a line of credit; and identified there were instances when the bank advised the complainant to return money from his personal account because he paid himself too much from his corporate line of credit.

The Privacy Commissioner concluded that the information disclosed to the lawyer qualified as the personal information of the business owner on the basis that "[g]iven the extraordinary nature of the complainant's dealings with the bank... it would be

extremely difficult to separate the complainant's personal information from his business information."

[142] In this case, for the information sought by Applicant A, I have already determined that if the information is provided to Applicant A, then they would be unable to identify the number of harvests within each concession area. As no business information will be revealed about the Corporate Concessions, personal information about the I/C Holders could not be revealed. Given this, I find that subsection 25 (1) does not apply to the information sought by Applicant A.

[143] In the case of the information sought by Applicant B, if the information sought was provided to Applicant B, I have already determined that:

- a. they may be able to estimate the number of big game animals harvested, of the types, indicated by outfitter guided hunters in Outfitter 1 and Outfitter 2 concession areas between April 1, 2017 and March 31, 2018;
- b. there is some general pricing information in the public domain about the cost per hunt for specific animal species;
- c. neither Outfitter 1 or Outfitter 2 advertise their pricing on their websites; and
- d. they will not be able to determine the amount of money earned by each Outfitter for the specified period because there is additional unknown income earned by these Outfitters.

[144] Additionally, there are a number of expenses associated with operating an outfitter guiding operation, including human resources, food, camp upkeep, equipment maintenance, etc. Based on the evidence, in my view, if Applicant B receives the information sought, they could not infer the income of the I/C Holders of Outfitter 1 and Outfitter 2. Nor could they learn anything else of a personal nature about them, including about their financial or employment history, or otherwise.

[145] Given this, I disagree with the Department that the information sought by Applicant B, which I determined is corporate information, is inextricably linked to the I/C Holders of Outfitter 1 and Outfitter 2 such that by providing the information to Applicant B, it will reveal personal information about the I/C Holders.

[146] Based on the foregoing, I find that subsection 25 (1) does not apply to the information sought by Applicant B.

IX FINDINGS

[147] On Issue One, I find the Department is not required by subsection 24 (1) or subsection 25 (1) to refuse to provide Applicant A with the following information:

- a. the actual number of big game animals harvested by non-resident special guided hunters for each species of big game (*i.e.* moose, caribou, wolf, black bear, grizzly bear) in each subzone in Yukon for each year between April 2009 and March 2017; and
- b. the actual number of big game animals (*i.e.* moose, caribou, wolf, black bear, grizzly bear) harvested by resident hunters in each subzone in Yukon between April 2009 and March 2017.

[148] On Issue Two, I find the Department is not required by subsection 24 (1) or subsection 25 (1) to refuse to provide Applicant B with the following information:

- a. non-resident hunter harvest data for sheep, caribou, and moose separately for two outfitting concessions operated by Outfitter 1 and Outfitter 2 between April 1, 2017 and March 31, 2018.

X RECOMMENDATIONS

[149] On issue One, I recommend that the Department provide Applicant A with access to the following information to which they are entitled:

- a. the actual number of big game animals harvested by non-resident special guided hunters for each species of big game (*i.e.* moose, caribou, wolf, black bear, grizzly bear) in each subzone in Yukon for each year between April 2009 and March 2017; and
- b. the actual number of big game animals (*i.e.* moose, caribou, wolf, black bear, grizzly bear) harvested by resident hunters in each subzone in Yukon between April 2009 and March 2017.

[150] On Issue Two, I recommend that the Department provide Applicant B with access to the following information to which they are entitled:

- a. non-resident hunter harvest data for sheep, caribou, and moose separately for two outfitting concessions operated by Outfitter 1 and Outfitter 2 between April 1, 2017 and March 31, 2018.

Public Body's Decision after Review

[151] 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.

[152] 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.

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

Applicants' Right of Appeal

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

ORIGINAL SIGNED

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

Distribution List:

- Public Body
- Applicants

