

MEMORANDUM

DATE: January 25, 2023

TO: Applicant
c/o ATIPP Office
Corporate Information Management
Highways & Public Works (W-10)

FROM: Phyllis Copeland
Records Officer/Designated Access Officer
Economic Development (F-1)

RE: **ATIPP #22-537 – FINAL RESPONSE – PUBLIC BODY
DECISION ON THE RELEASE OF THIRD PARTY RECORDS**

The Department of Economic Development has completed its review of ATIPP Request 22-537. After conducting a thorough search of the program areas for records responsive to this request, we have determined that the applicant's request is denied. The request reads:

I would like to request the name of every company that has applied to use the nominee program. I am requesting this information under DIVISION 10 (PUBLIC INTEREST OVERRIDE) of the Access to information and protection of privacy act, on the grounds that the public interest in disclosing the information clearly outweighs the public interest in withholding the information from disclosure, and therefore that no consent for the disclosure is needed.

Timeframe: September 1, 2016 - November 21, 2022.

Clarification from Applicant:

We are not seeking the names of people who have been sponsored as Yukon Nominees. We are only seeking the names of the businesses that have applied to use the nominee program from September 2016 to the present. The media needs this information to accurately report on the impact that the nominee program has had and is having on the community's labour market, as well as to independently report on the Yukon Liberal Party's administration of the program. The ability for the media to do this is as important as the media's ability to know, for example, the size of contracts being awarded to private businesses, the names of those businesses, and the terms of the contracts.

The Department of Economic Development has received written responses from third parties involved in the third party consultation regarding the above named ATIPP request. After considering all relevant circumstances, the Public Body has decided to withhold the business names pertinent to this request **with the exception of those businesses that have consented (in writing) to this disclosure.**

Information pertaining to this request is being withheld in accordance with the *ATIPP Act* under the following section:

Disclosure harmful to third party business interests

77(1) Subject to subsections (2) and (3), the head of a responsive public body may deny an applicant access to information held by the responsive public body that is a trade secret of, or commercial, financial, scientific or technical information of, a third party that a public body has not accepted in confidence in the prescribed manner from the third party if:

(a) the head determines that disclosure of the information could reasonably be expected to result in undue financial loss or gain to a person or entity;

(b) the head determines that disclosure of the information could reasonably be expected to result in similar information no longer being supplied to the responsive public body and the head is satisfied that it is in the public interest that similar information continue to be supplied to the responsive public body;

(c) the head determines that disclosure of the information could reasonably be expected to significantly harm the competitive or negotiating position of the third party.

Disclosing the withheld information would result in businesses not accessing the program. Private sector participation in the program is in the public interest as it is one way of increasing the pool of available labour in Yukon. The public interest is further served by the Yukon Nominee Program assisting employers in hiring staff necessary for their business which, improves the availability of goods and services in Yukon.

It is reasonable to expect that disclosing business information, without consent, would harm the business by influencing the public's perception about the business by creating a false impression that the business would rather hire foreign nationals as opposed to locals or that the business uses the Yukon Nominee program to avoid hiring locals. Financial harm would ensue when clients chose not to patronize the business on ethical or moral grounds.

Disclosure harmful to individual or public

79 The head of a responsive public body may deny an applicant access to information held by the responsive public body (including the applicant's own personal information):

(a) if the head reasonably believes that disclosure of the information to the applicant could reasonably be expected to:

(i) cause serious harm to the health of, or threaten the safety of, an individual.

The department's position is that disclosing the names of employers accessing the program (i.e. business names), could reasonably be expected to lead to an inadvertent disclosure of personal information protected by the ATIPP Act. It would not take a lot of effort for the applicant to identify specific employees at an employer who likely are working under the program.

Economic Development has concerns with this type of ATIPP request in that by releasing business names we inadvertently enable the identification of specific individuals. Likely not a concern in a bigger jurisdiction but a real possibility in the Yukon, which is a violation of the ATIPP Act.

Finally, the Yukon Nominee Program is administered by Immigration, Refugees, and Citizenship Canada (IRCC) and the Yukon Government Department of Economic Development.

There is no cost to the applicant.

You have the right to make a complaint in respect of this response to the Yukon Information and Privacy Commissioner under section 66 of the *ATIPP Act*, no later than 30 business days after you receive this response. To make a complaint, contact:

Yukon Information and Privacy Commissioner
3162 - 3rd Ave.

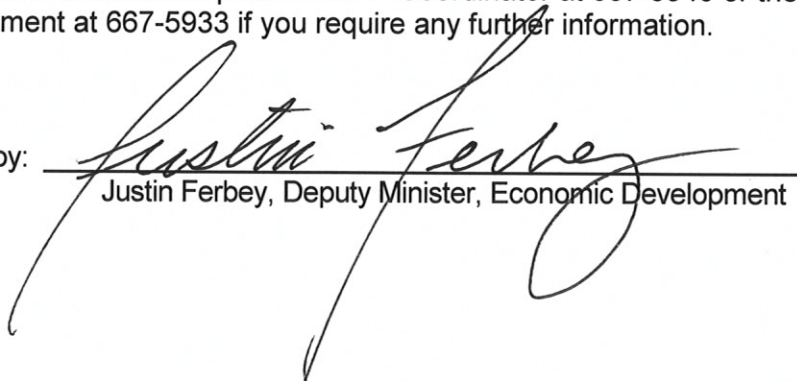
Whitehorse, YT Y1A 1G3

E-mail: intake@yukonombudsman.ca

Phone: (867) 667-8468; toll free (in Yukon) 1-800-661-0408 (ext. 8468)

Please contact the Economic Development ATIPP Coordinator at 667-5946 or the Director, Finance & Information Management at 667-5933 if you require any further information.

Response reviewed by:



Justin Ferbey, Deputy Minister, Economic Development