

MEMORANDUM

DATE: February 16, 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 #22-659 – FINAL RESPONSE – GRANTED IN PART**

The Department of Economic Development has completed its review of ATIPP Request 22-659. After conducting a thorough search of the program areas for records responsive to this request, we have determined that the applicant's request will be granted in part. The request reads:

Regarding ATIPP #22-537, we are requesting the letter that was mailed out to the third parties, as well as the written responses from third parties that expressed a desire that their business name not be released.

The Department of Economic Development has received written responses from third parties involved in the third party consultation regarding the above named ATIPP request totaling five (5) pages with two (2) pages being released in full and three (3) pages being granted in part.

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

Third party personal information

70(1) The head of a responsive public body must not grant an applicant access to a third party's personal information held by the responsive public body if the head determines, in accordance with this section, that disclosure of the information would be an unreasonable invasion of the third party's privacy.

(3) Each of the following types of disclosure of a third party's personal information is considered to be an unreasonable invasion of the third party's privacy:

- (a) the disclosure of information about
 - (i) the third party's race, ethnicity, or sexual orientation,
 - (iii) the education or employment history of the third party,

Various written comments express concern about racism and prejudice directed at the owners/proprietors of the businesses and possible harassment of their employees.

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.

Concern was expressed about business competitors, internet trolling, and that no valid reason was given as to why they wanted the names of businesses enrolled in the Yukon Nominee Program. Also, there is no way to know the true intent or how this information will be used and the potential consequences of the use of this information whether direct or indirect, and the businesses do not wish to find out.

Employers worry about business disruption and the potential for overwhelming requests for comment from the public, labour organizations and media regarding participation in the program. Should these time-consuming requests occur, it is reasonable to assume that they would have a detrimental impact on the operational effectiveness of already short-staffed operators.

The request appears to be a media request that has political objectives in that the request is specifically looking to evaluate how the "Yukon Liberal Party" has done managing this program. Any such analysis would only require the number of companies that have applied to use the program, the number that have been successful and the overall number of individuals hired through the program in the requested time-frame.

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 and compromise the privacy of nominees. Having the names of the participating companies published opens all of these companies and their employees to potential criticism and harassment. 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.

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.

Thank you.

Response reviewed by: 
Justin Ferbey, Deputy Minister, Economic Development