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Tabling of Documents

Pat Angnakak, MLA

Iqaluit-Niaqunnguu

May 30, 2017

*Exchange of Correspondence with the Minister of Finance
Concerning Human Resources Manual Directive 511 – Reference
Checks*

Thank you, Mr. Speaker.

I wish to table today a copy of my recent exchange of correspondence with the Minister of Finance concerning the government's policy regarding reference checks during the staffing process.

Mr. Speaker, I encourage all Members to review this item with care. Thank you, Mr. Speaker.

15. Any evaluative or opinion information which is collected concerning a candidate from a referee in confidence must be marked as "ATIPP s.22 exempt" and kept in a sealed envelope clearly marked "Confidential pursuant to ATIPP."

I am aware that section 22 of the *Access to Information and Protection of Privacy Act* provides that:

Confidential evaluations

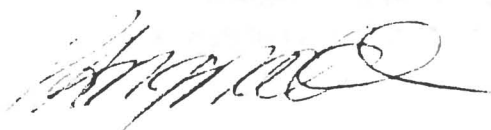
22. The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of government contracts or other benefits when the information has been provided to the public body, explicitly or implicitly, in confidence.

I have recently been approached by a number of constituents who have expressed concerns to me regarding the government's reference check process. In a number of cases, constituents who have applied for Government of Nunavut positions have informed me that they were not permitted to view the contents of negative references that were provided by referees. Although I recognize that section 22 of the *Access to Information and Protection of Privacy Act* provides heads of public bodies with the discretion to disclose or to not disclose such information, my understanding is that the government's practice, until recently, was to provide such information to applicants upon request. Consequently, **I ask that your reply to my correspondence clarify**, in detail, the government's current practice in this regard, and **I ask that you also clarify**, in detail, what information is considered to be "fact-based" within the meaning of section 11 of *Human Resources Manual Directive 511*.

While I do recognize the importance of obtaining candid references from referees, I am also concerned about the ability of applicants to challenge claims about them that may have been made in bad faith by referees in cases where, for example, the applicant had previously filed a complaint of workplace harassment against the referee in his or her capacity as the applicant's current or former supervisor. I have received concerns from constituents who have indicated that they have been in such situations. **I ask that you clarify**, in detail, what "evidence" is required to be provided by applicants within the meaning of section 9 of *Human Resources Manual Directive 511* to allow for the waiving of the requirement that the applicant's current supervisor be a referee during the reference check process.

I look forward to your reply.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Pat Angnakak', with a stylized flourish at the end.

Pat Angnakak, MLA
Iqaluit-Niaqunnguu



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MAY 23 2017

Pat Angnakak, MLA
Legislative Assembly
Iqaluit, NU
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Pat
Dear Mrs. Angnakak,

I am writing to you in response to your letter dated April 28th, 2017 regarding reference checks during the Government of Nunavut (GN) staffing process. In this letter you specifically request clarification on 1) the GN's current practice in regards to the application of section 22 of the *Access to Information and Protection of Privacy Act* (ATIPPA) in disclosure of a candidate's personal information provided by referees while conducting a reference check and 2) what is considered to be "fact-based" information within the meaning of section 14 of Human Resource Manual (HRM) 511: Reference Checks and 3) the evidence which is required to be provided by employment candidates to allow for not using the candidate's current supervisor as a referee.

The GN does not hire an individual based on one reference check because it would not provide for a thorough, accurate account of an individual's skills, knowledge, attitude and abilities. Current GN employees are required to provide two references; candidates who are not GN employees are required to provide three references. A candidate's most current supervisor is always required as a reference as they are the individual most able to provide a current assessment of skills, knowledge, attitude and abilities. The other referee(s) are chosen by the candidate. This approach allows for cross-checking and allows for more than one source to be verified, helping ensure that the GN is hiring a suitable candidate for the position advertised.

Although candidates must normally provide their current supervisor as one of their referees, they have the option of offering another referee in place of that supervisor if they can provide evidence that the current supervisor is either not appropriate or not available. Reasons that the current supervisor is not appropriate could include being a panel member, a relative, unwilling to participate, had such short experience as the supervisor so as not to have adequate time to assess a candidate's abilities, or there could be issues outside of work that could affect the quality of the reference given. The selection panel would consider the information provided to them by the candidate and decide how to proceed.

This approach has not changed; what did change is how evaluative information provided during reference checks is dealt with. Section 22 of ATIPP allows for discretion in protecting evaluative information provided in confidence for the purposes of determining a candidate's suitability for a job. HRM 511: Reference Checks was amended in May 2016 to implement that section of the legislation, allowing for discretion in releasing evaluative information. This amendment was developed in consultation with the Department of Executive and Intergovernmental Affairs (EIA) ATIPP Office and vetted by the Information and Privacy Commissioner (IPC), GN Human Resources (HR) Coordinators Committee, GN Policy Official Committees, the GN Deputy Minister's Committee (and their Building Capacity subcommittee) prior to being approved by Cabinet.

The reference check is now divided into two parts: factual information, and the referee's opinion of the candidate. Referees are first asked fact-based questions that include: what position the candidate held, for how long, responsibilities during their employment and why they left (if known).

The referee is then advised that:

The following section deals with questions on your overall assessment of [candidate]. Section 22 of the ATIPP Act allows the head of a public body to use their discretion to withhold information provided in confidence if it is of an evaluative or opinion based nature. As these questions are more evaluative or opinion based, you have the option to request that this information be held in confidence. Would you like to do so?

The questions in part two relate to how the candidate interacts with other people in the organization; how the candidate responds to constructive criticism; how the candidate adapts to change; how the referee feels the candidate may react to a northern and cross-cultural environment (if applicable) and how well the individual upholds a high standard of conduct (such as confidentiality, integrity, workplace behaviour).

If the panel receives conflicting references from a current GN employee (one positive and one negative) the panel would request a third referee from the candidate. If the candidate has previous GN experience on their resume the selection committee may request that the reference be from that employment. This allows for an assessment of how the individual performed within a government setting and/or within a cross-cultural environment.

The change in the reference check directive was intended to balance the Government's need to have honest and accurate references with the rights of candidates to have access to their personal information. As the main hiring agent for the GN my officials are required to ensure that the interests of government are protected and that the best candidates are hired into the public service, while still providing an individual access to their personal information.

The Department of Finance is constantly striving to improve the efficiency and transparency of the staffing process. As such I have directed my officials to ensure each candidate who reaches the reference checking stage of a job competition is advised of HRM Directive 511 and they will have the ability to make any inquiries with respect to the process and application of the directive. As you may be aware, all HRM Directives and Department of Finance Policies are publically available on the Department of Finance website. However, it is my hope that this pro-active measure to increase communications with potential hires will be another positive step in promoting the GN as the preferred employer in Nunavut.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keith Peterson', with a long horizontal flourish extending to the right.

Keith Peterson
Minister of Finance