

**NUNAVUT  
INFORMATION AND PRIVACY COMMISSIONER**

Review Decision 02-05  
May 1, 2002  
Review File: 02-122-5

**A. BACKGROUND**

By letter of December 28<sup>th</sup>, 2001, the Applicant applied under the *Access to Information and Protection of Privacy Act* (the "Act") to the Department of Education, Kivalliq School Operations, requesting that certain information in a letter written by Christian DaSilva, Superintendent of Schools, dated December 20<sup>th</sup>, 2001, be corrected. Specifically, the Applicant made the following comment:

Your opinion that I was removed as a "dependent" of my wife constitutes an error in my personal information.

If I am reading the material correctly, the term "removed" relates to the cost of the Applicant's move from his former place of residence to Nunavut to take up employment with the Department of Education. It is to be noted that the letter of December 20<sup>th</sup>, 2001 had a notation that it had been copied to Jane Aupaluktuq, Superintendent, Department of Human Resources, Rankin Inlet. The letter also indicated that any further inquiries with respect to the Applicant's relocation or storage assistance would be handled by the Department of Human Resources. The letter is marked as being "Personal & Confidential".

The Department of Education replied to the Applicant by letter of January 21<sup>st</sup>, 2002 indicating that:

As has been made clear to you on a number of occasions, you were a "dependent" of your wife for the purposes of your removal to [Nunavut]. This is the context in which this word has been applied to you. I trust this addresses your concerns.

The Department did not provide the response required pursuant to section 45(3) of the *Access to Information and Protection of Privacy* (ATIPP) Act which states:

Within 30 days after the request is received, the head of the public body that receives the request shall give written notice to the individual that:

- a) the correction has been made; or
- b) a note of the requested correction has been made under subsection (2)

By letter dated February 17<sup>th</sup>, 2002, the Applicant requested that I review Department of Education's "decision" to refuse to correct an error in his personal information. By the same letter, the Applicant asked that I review the decision of the Department of Education to disclose his personal information to the Department of Human Resources which he says was done when a copy of the December 20<sup>th</sup> letter to him was copied to an employee in the Department of Human Resources in Rankin Inlet.

By letter of February 21<sup>st</sup>, 2002, I requested that the Department of Education address the issues raised by the Applicant and they did so by letter of March 18<sup>th</sup>, 2002. This letter was provided to the Applicant by letter of April 4<sup>th</sup>, 2002 and he was asked to provide any response he might have by May 2<sup>nd</sup>. The Applicant's response was received on April 22<sup>nd</sup>.

## **B. ISSUES AND DISCUSSION**

The Applicant raises two completely different issues, although they both arise out of one letter from Christian DaSilva, the Superintendent of Schools for Kivalliq School Operations, Department of Education which is addressed to the Applicant. The first issue is whether or not the "refusal" to correct the classification of the Applicant as a "dependent" of his wife in the letter was a breach of the Act. The second issue is whether, by sending a carbon copy of that letter to an employee of a different department within the Government, there was an improper use of the Applicant's personal information.

## 1. Correction of Personal Information

As the Applicant points out in his submissions, the ATIPP Act specifically provides for a mechanism to ensure that individuals have the right to request a correction of personal information about themselves which is held by public bodies. This is clearly set out in Section 1(b) of the Act which states:

The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by:....

- b) giving individuals the right of access to, and a right to request correction of, personal information about themselves held by public bodies;

Section 45 of the Act sets out the procedure for making such a request:

- (3) An individual who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or its control to correct the information;
- (4) Where a correction is not made in response to a request under subsection (1), the head of the public body shall make a note of the requested correction on or cross-referenced to the information to which it relates

Subsection (3), which outlines the Department's responsibility to inform the Applicant of the decision with respect to the request, is set out in the introduction to this recommendation.

Also of some relevance is section 46(2) which states as follows:

- (2) Where a public body has disclosed personal information to another public body or a third party recipient in the 12 months before a request for correction of that information is received by the public body, the head of the public body shall notify the other public body or the third party recipient that:
  - a) the personal information has been corrected ; or
  - b) a note of the requested correction has been made under subsection 45(2)

It should be noted as a preliminary matter that, although an individual has the right to ask that his or her personal information be corrected, there is no obligation on the government agency to make the requested change.

The first question which I asked myself when I was reviewing this request was whether or not the information which the Applicant seeks to have “corrected” is “personal information” as that term is defined in the Act. Personal information is defined in section 2 of the Act to mean “information about an identifiable individual, including:

- a) the individual’s name, home or business address or home or business telephone number,
- (b) the individual’s race, colour, national or ethnic origin or religious or political beliefs or associations,
- (c) the individual’s age, sex, sexual orientation, marital status or family status,
- (d) an identifying number, symbol or other particular assigned to the individual,
- (e) the individual’s fingerprints, blood type or inheritable characteristics,
- (f) information about the individual’s health and health care history, including information about a physical or mental disability,
- (g) information about the individual’s educational, financial, criminal or employment history,
- (h) anyone else’s opinions about the individual,
- (i) the individual’s personal opinions, except where they are about someone else;

The Department argues that the characterization of the Applicant as a “dependent” is an administrative classification of the Applicant for the purposes of applying the government’s Relocation Policy. The Applicant, however, considers the stated classification to be nothing more or less than “an opinion” held by the writer of the letter.

I am not convinced that the administrative decision to classify the Applicant as a “dependent” for the purposes of the Relocation Policy is the kind of thing that can be “corrected” under the provisions of the ATIPP Act. The government’s decision to classify the Applicant as a dependent is a result of their interpretation of an existing policy. The classification apparently has financial consequences for the Applicant and he does not like it. It is not, however, my place to interpret the policy or to comment on the administrative decision made. That decision and interpretation is not something that I have the jurisdiction to deal with under the ATIPP Act.

I would say, however, that once that administrative decision is made, the classification itself may be personal information which is subject to the protection of the privacy provisions of the Act. That, however, has not been made an issue here.

For the reasons stated, I do not recommend that any “correction” be made to the description of the Applicant as a dependant of his wife for the purposes of the Relocation Policy. However, pursuant to section 45 of the Act, I would recommend that a notation be made on the Applicant’s files, both in the Department of Education and with the Department of Human Resources, that the Applicant disagrees with the interpretation of the Relocation Policy and the classification of him as a “dependent” for the purposes of that policy.

I would note that I am concerned that the ATIPP Co-Ordinator for the Department of Education failed to follow the clear steps provided for in the Act when requested to make a correction to “personal information”. I strongly recommend that more attention be given to those provisions of the Act which put positive obligations on government agencies to take certain steps or do certain things.

## 2. Improper use of Personal Information

The second question is whether the Department of Education wrongfully used the Applicant’s personal information by sending a copy of the letter in question to an

employee of a different government department, in this case, the Department of Human Resources.

The ATIPP Act outlines when and how information about an individual can be used and shared. Specifically, section 43 of the Act states as follows:

- 43.** A public body may use personal information only
- (a) for the purpose for which the information was collected or compiled, or for a use consistent with that purpose;
  - (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use; or
  - (c) for a purpose for which the information may be disclosed to that public body under Division C of this Part.

The bottom line rule is that personal information collected by one government agency is not to be shared with another government agency unless the individual has given his or her express or implied consent to the transfer of the information or it is being used for the purposes it was originally collected. In this case, the only personal information contained in the letter from Mr. DaSilva to the Applicant is the Applicant's name and community of residence as well, perhaps, as the fact that he had been classified as a dependent for the purposes of his relocation benefits. The letter was copied to the Department of Human Resources apparently because it is that department, and not the Department of Education, which deals with relocation matters. In my opinion, the Applicant's information, in this case, was used "for the purpose for which the information was collected or for a use consistent with that purpose". Furthermore, in this case, it is my opinion that the Applicant implicitly consented to the sharing of the information in question with the Department of Human Resources. The Applicant was the one who initiated the inquiry about his relocation benefits. By doing so he impliedly consented to the sharing of his correspondence, as well as his name, mailing address and other pertinent personal information, with the government agency who was responsible for making decisions with respect to those benefits.

That having been said, I do not believe that the Department of Education really gave much thought to whether or not, in copying the letter in question to the Department of

Human Resources, they might be breaching the privacy provisions of the ATIPP Act. I do not know what, if any, information is provided to a new employee with respect to employment records and administrative matters connected to the employment, such as relocation benefits. If I understand the Department of Education's correspondence in this case correctly, although the Applicant is employed with the Department of Education, the Department of Human Resources has the overall responsibility for all Government of Nunavut employees, and it is that department which keeps all records relating to employees. In this situation, I would suggest that it would be prudent for all government departments (including the Department of Education) to include in its letter of offer of employment a paragraph which confirms that the employer is, in fact, the Government of Nunavut and that all personnel records are maintained by the Department of Human Resources and pertinent personal information will, therefore, be shared with that department for the purpose of administering payroll, benefits and other incidents of the individual's employment with the Government of Nunavut.

### **C. RECOMMENDATIONS**

In light of the above, I make the following comments and recommendations:

1. the characterization of the Applicant as a "dependent" of his wife for the purposes of the government's relocation policy is an administrative classification and is not subject to "correction" at least under the provisions of the ATIPP Act. The Applicant may have other recourse, either through his union or the courts to challenge this administrative determination, but it is not the role of this office to determine whether or not an administrative classification was properly made. I do not recommend that any correction be made to this information.
2. Once the determination has been made that the Applicant is a dependent for the purposes of the policy, that fact becomes personal information which is subject to the privacy provisions of the Act.

3. In these circumstances, it is incumbent upon the Department of Education to make a note of the request for correction to personal information on the Applicant's file. I therefore recommend that a notation be made on the Department's copy of the December 20<sup>th</sup> letter from Christian DaSilva, Superintendent of Schools, to the Applicant as follows:

Take note that (Applicant's name) requested pursuant to section 45 of the *Access to Information and Protection of Privacy Act* that a correction be made to personal information about him contained in this letter so as to remove any reference to him as a "dependent" of his wife.

4. I further recommend that a copy of the letter, with the notation described above, be provided to the Department of Human Resources in accordance with section 46(2) of the ATIPP Act, along with a letter of explanation.
5. I strongly recommend that ATIPP Co-Ordinators in all government departments pay closer attention to those provisions of the Act that put positive obligations on government agencies to take certain steps in the face of a request under the *Access to Information and Protection of Privacy Act* and that they deal with all ATIPP requests in accordance with those legislated guidelines.
6. It is my opinion that, in making an inquiry with respect to his Relocation Benefits to the Department of Education, the Applicant implicitly gave that Department consent to share certain of his personal information with the government agency which had charge of administering those benefits and that the Applicant, therefore gave his implicit consent to the exchange of pertinent personal information between the Department of Education and the Department of Human Resources. There was, therefore, no wrongful use of the Applicant's personal information, to the extent that there was such information in the letter in question.

7. It is my recommendation that caution be exercised by all government employees when sending what are commonly referred to as “carbon copies” of correspondence to third parties either within the government or beyond. If such correspondence contains personal information of an individual, that information may well be subject to the privacy provisions of the ATIPP Act. This is an issue of “mindset” and it will require continual oversight to ensure that all government employees are cognizant of the potential problem.
  
8. In light of the fact that it appears that all personnel records for all employees of the Government of Nunavut are maintained with the Department of Human Resources, I would strongly recommend that all written job offers contain a paragraph which confirms that all personnel records are maintained by the Department of Human Resources and pertinent personal information will, therefore, be shared with that department for the purpose of administering payroll, benefits and other incidents of the individual’s employment with the Government of Nunavut and , further, that by accepting the position the employee consents to the sharing of information to between that department and the employee’s department of employment to the extent necessary to deal with those matters.

**Elaine Keenan Bengts**  
**Nunavut Information and Privacy Commissioner**