

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Decision 05-16
March 7, 2005

Review File: 04-279-5

A. BACKGROUND

By a letter dated November 18th and received on November 26th, 2004, the Applicant requested a review of the response he received from the Department of Health and Social Services to his request information about himself. It was unclear to me from the Applicant's first letter exactly what it is that he was asking me to review. I therefore asked him to provide me clarification. It appeared from his first letter that he had made a request for information and had received no response and that this was one of the issues that he wanted me to address. It also appeared that the more significant complaint for the Applicant was that he felt that his privacy rights had been breached.

The Applicant provided clarification as to a number of matters. I had asked him a number of questions to assist me to understand his complaint. By the time of his response to my inquiries, he had, apparently, received a response to his Request for Information. From his comments, I concluded that the Applicant's complaint is really not about his access request (other than that it took too long to respond), but more about a perceived breach of his privacy.

B. ISSUES

The Applicant raises two issues.

The first is that his request was not responded to within the required 30 day response period provided for in the Act.

The second matter that the Applicant is that he feels his privacy has been compromised in several ways:

1. Unauthorized individuals had access to his Social Insurance Number and then used that information in an unauthorized way
2. Copies of documents containing sensitive medical information about the Applicant were passed from one Government employee to a second and then to a third.
3. Sensitive personal information was received on a fax machine which was not in a secure area.
4. Administrative assistants within the public body handled the Applicant's sensitive medical information.
5. The implementation of a "quality assurance program" allowed anyone to access his personnel files.

The Applicant has also raised a number of issues which are clearly outside the jurisdiction of the Information and Privacy Commissioner such as whether or not the Government of Nunavut (with whom the Applicant was, at one time, employed) properly closed his government e-mail account and denied him further access to it. I will not make any further comment on these issues.

B. DISCUSSION

1. Response to Request for Information

With respect to the first issue, the Applicant's initial correspondence to me claimed that he had not received any response to his request for his own personal information which he had made to the Department of Health and Social Services.

Section 8 of the Act provides that:

8. (1) The head of a public body shall respond to an applicant not later than 30 days after a request is received unless
- (a) the time limit is extended under section 11; or
 - (b) the request has been transferred under section 12 to another public body.

Section 11 allows for the time for a response to be extended in certain circumstances:

- 11.(1) The head of a public body may extend the time for responding to a request for a reasonable period where
- (a) the applicant does not give enough detail to enable the public body to identify a requested record;
 - (b) a large number of records is requested or must be searched to identify the requested record and meeting the time limit would unreasonably interfere with the operations of the public body;
 - (c) more time is needed to consult with a third party or another public body before the head can decide whether or not the applicant is entitled under this Act to access to a requested record; or
 - (d) a third party asks for a review under subsection 28(2).
- (2) Where the time for responding to a request is extended under subsection (1), the head of the public body must tell the applicant without delay
- (a) the reason for the extension;
 - (b) when a response can be expected; and
 - (c) that the applicant may ask for a review of the extension under subsection 28(1).

During the course of my review, it became apparent that the Department of Health and Social Services had, in fact, responded to the Applicant's request in a timely manner and had advised the Applicant pursuant to Section 11 of the Act that they required clarification and, further, that because of the volume of materials requested, they were extending the time for response to the request to December 2nd, 2004. It further

appears from the information that I now have, that the records were, in fact, provided to the Applicant on December 2nd, or perhaps a few days before that.

I have reviewed the correspondence between the Applicant and the Department with respect to the extension and I am satisfied that the Department dealt with the extension in the manner prescribed by the legislation. Furthermore, having reviewed the responsive records, I am satisfied that the extension was necessary to fully respond to the Applicant. The Department provided the Applicant with over 400 pages of responsive records, obtained from a number of different sources. In my opinion, the Department acted as quickly as they could to respond to the request for information.

2. Breaches of Privacy

- A. Unauthorized individuals had unauthorized access to the Applicant's Social Insurance Number and then used that information in an unauthorized way

In order to address this complaint, it is necessary to set out some of background. The Applicant was employed by the Department of Health and Social Services in a capacity that required certain educational credentials. In applying to the public body, the Applicant indicated that he had received two degrees from two separate educational institutions. When he was hired, the public body apparently took the Applicant's word that he had the educational credentials he claimed he had. At some point during the course of the employment relationship, the public body, felt that it was necessary to confirm the Applicant's credentials. They contacted the two educational institutions listed in the Applicant's paperwork to confirm that the applicant had, indeed, received the degrees claimed. In the case of one of the institutions, an inquiry was made by e-mail. That e-mail did not contain any personal information about the Applicant other than his name and the degree he claimed to have received from the University in question. A response was provided without further information being requested. The second University, however, requested that the public body provide either the Applicant's Social Insurance Number or his date of birth. I have reviewed all of the records provided and could find nothing which suggests that this additional information

was provided in writing. However, the public body admits that it did provide that information to the University and that the University then responded to their request. I can only assume that the information was provided by telephone.

The public body indicates that the Social Insurance Number and date of birth were obtained from the Applicant's personnel file. It is their position that an employer is entitled to check the credentials of employees and that making those inquiries did not constitute a breach of the Applicant's rights of privacy. Furthermore, they point out that the University which requested the Social Insurance Number and date of birth already had that information on their files and was looking only to confirm that they were, in fact, providing accurate information (i.e. that the Applicant was properly identified as being the person on their records).

I agree with the public body that when a person applies for a job with any employer, and provides a resume in connection with that application that includes information about educational credentials, the reasonable person would anticipate that the employer may choose to confirm the information in the resume. There is, in my opinion, an implied consent given to the employer to talk to the educational institutions named in the resume to confirm the facts included. That implied consent does not end upon hire. If circumstances are such that the employer at some point comes to question the statements made by the Applicant in his or her resume, it continues to have the implied consent of the employee to make inquiries. I find that the public body did not breach the Applicant's privacy rights when they made inquiries of the two universities to confirm that the Applicant's stated educational credentials were in order

The next question becomes whether the disclosure of the Applicant's Social Insurance Number and date of birth to one of the universities constituted an improper use of the Applicant's personal information. A social insurance number is provided to an employer as a matter of legislated requirement for the purposes of Revenue Canada records and required filings. When providing the social insurance number to an employer, the reasonable employee would consider this to be the limited purpose for which the number would be used and for which there would, therefore, be an implied consent. However, if the employer is a public body, there may be other circumstances

in which a social insurance number or other personal information may be disclosed. In particular, section 48 of the *Access to Information and Protection of Privacy Act* provides as follows:

A public body may disclose personal information

- (a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;
- (b) where the individual the information relates to has identified the information and consented, in the prescribed manner, to its disclosure;
- (c) for the purpose of enforcing a legal right that the Government of [Nunavut] or a public body has against any person;
- (d) for the purpose of
 - (i) collecting a fine or debt owed by an individual to the Government of [Nunavut] or a public body, or
 - (ii) making a payment owed to an individual by the Government of the [Nunavut] or a public body;
- (e) to a public body or a law enforcement agency for law enforcement purposes;
- (f) where disclosure is by the Minister of Justice or an agent or lawyer of the Minister of Justice to persons responsible for a place of lawful detention;
- (g) for the purpose of hiring, managing or administering personnel of the Government of the [Nunavut] or a public body;
- (h) to the Maintenance Enforcement Administrator for the purpose of enforcing a maintenance order under the *Maintenance Orders Enforcement Act*;
- (i) to the Information and Privacy Commissioner, where the information is necessary for the performance of the duties of that officer;
- (j) to the Auditor General of Canada or to any other prescribed person for audit purposes;

- (k) to an officer or employee of the public body or to a member of the Executive Council, where the information is necessary for the performance of the duties of the officer or employee or the member of the Executive Council;
- (l) for use in the provision of legal services to the Government of [Nunavut] or a public body;
- (m) to the [Nunavut] Archives for archival purposes;
- (n) for the purpose of complying with a subpoena or warrant issued or an order made by a court, person or body that has the authority to compel the production of information or with a rule of court that relates to the production of information;
- (o) for the purpose of supervising an individual under the control or supervision of a correctional authority;
- (p) for the purpose of complying with a law of the Territories or Canada or with a treaty, written agreement or arrangement made under a law of the Territories or Canada;
- (q) when necessary to protect the mental or physical health or safety of any individual;
- (r) so that the next of kin of an injured, ill or deceased individual may be contacted;
- (s) for any purpose when, in the opinion of the head,
 - (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
 - (ii) disclosure would clearly benefit the individual to whom the information relates;
- (t) where the information is otherwise available to the public;
- (u) for any purpose in accordance with any Act that authorizes or requires the disclosure; or
- (v) to a member of the Legislative Assembly who has been requested by the individual to whom the information relates to assist in resolving a problem.

I draw particular attention to subsection (g) which allows for the disclosure of personal information “for the purpose of hiring, managing or administering personnel of the

Government of [Nunavut] or a public body". In this case there is no doubt that the request made by the public body of the universities, and the resultant disclosure of the Applicant's social insurance number and date of birth, was all within the context of "managing or administering the personnel of the Government of Nunavut". I therefore find that this disclosure was not contrary to the Act.

- b) The Applicant's Human Resources file, containing sensitive medical information about him, was passed from one Government employee to a second and then to a third.

There is no evidence whatsoever that the Applicant's personnel file left its home in the Department of Human Resources at any time. It is, however, clear from a review of the records provided by the public body that there was a core group of four or five individuals who were routinely kept "in the loop" in connection with the discussions and deliberations concerning the Applicant's situation. Others were involved as necessary to provide administrative input and assistance. In fact, on my review of the records, I cannot say that the Applicant himself did not add to the list of people within the public body who were receiving information about his case. Depending on who he felt was supportive of his position at the time, he chose to exchange e-mails with several different individuals, even after he was requested to limit his correspondence to one particular employee so as to avoid mixed messages and unnecessary confusion. Regardless, I am satisfied from my review of the file that the discussions were kept within a fairly small circle of public body employees who needed to have the information either as managers or for the purpose of carrying out the administrative work necessary to deal with the Applicant's personal situation. In fact, I believe that the public body took pains to ensure that the discussions were focused as narrowly as possible. I do not find that the Applicant's privacy rights were breached as a result of the number of individuals within the public body who were involved in his case.

- c. Sensitive personal information was received on a fax machine which was not in a secure area.

The Applicant complains that sensitive health information about him was received on “fax” machines in public offices which were open to view by any employee of the public body and, perhaps, by members of the public.

The public body, in response, indicates that its fax machines are located in departmental divisions and if the sender of a fax is concerned about the location of the fax machine, they can choose from other means of communication that may be perceived to be more secure.

I do take issue with the public body’s position in respect of this issue. To suggest that the sender of information should chose a means of communication that may be more secure is avoiding the issue. In today’s information age, there are expectations that matters can be dealt with quickly and often deadlines are imposed on the assumption that documents can be transmitted by fax which might otherwise take a week or more to be delivered by mail. Mail service in Nunavut is notoriously slow. To suggest that the Applicant should have to rely on “more secure methods of communication” would have left him with only courier (which is expensive and still relatively slow) or ordinary mail. It is inappropriate to put the onus on the public to ensure secure methods of communication with government bodies. It is the public body’s responsibility, under the Act, to maintain the confidentiality of personal information and communications. Furthermore, information sent by fax will not always come from the public. Often it will be a transfer of information from one public body to another. In my opinion, the *Access to Information and Protection of Privacy Act* requires all public bodies to ensure that fax machines are located in locations where the casual passer-by is not likely to see what might be sitting on the machine. Particularly for offices which deal with sensitive health information, fax machines should be in a closed room with limited access. In this case, there is no evidence whatsoever that the information exchanged by fax about the Applicant was seen or accessed by anyone other than office personnel responsible for administering the programs under which the the Applicant was being dealt with. However, this is clearly an issue which should be addressed on an office by office basis to ensure, as far as possible, the greatest security for incoming faxes.

- d) Administrative assistants within the public body handled the Applicant's sensitive medical information.

If I understand the Applicant's complaint, he feels that administrative personnel should not have had access to his file. The fact of the matter is that in order to process the Applicant's, or any other person's benefits, administrative personnel will have to have access to the file. All employees of public bodies are subject to confidentiality agreements and administrative personnel deal with sensitive personal information on a daily basis as part of their employment responsibilities. When one deals with government, one has to expect that some people are going to have access to your file. There is no basis to this complaint.

- e) The implementation of a "quality assurance program" allowed anyone to access the Applicant's personnel files.

There is no evidence that the Applicant's personnel file was accessed by any person other than employees within the Department of Human Resources and, perhaps, a senior manager with the Department of Health and Social Services, for whom the Applicant worked. Once again, one would expect a senior manager in a department dealing with an employee issue would have access to that employee's personnel file for the purposes of dealing with the issues raised. The file is compiled for the purpose of keeping records about the employee's time with the public body. I can find nothing in the materials provided to me or in the Applicant's submissions that suggest to me that his personnel information was inappropriately accessed or used.

C. RECOMMENDATION

Based on the above review, and having carefully reviewed all of the information provided to me by both the Department of Health and Social Services and the Department of Human Resources, I cannot find any evidence that the Applicant's privacy has been breached. I do, however, recommend that the Department of Health and Social Services, which arguably does deal with some of the most sensitive of

personal information, do an inventory of its fax machines and take steps to ensure that they are located in secure or semi-secure areas where it is not likely that casual passers-by might be able to read information received on the machine. This will help to avoid the possibility of an improper disclosure of information by reason of inadvertence.

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner
July 28, 2005