

**NUNAVUT  
INFORMATION AND PRIVACY COMMISSIONER**

Review Decision 05-20  
October 28, 2005  
Review File: 05-109-5

**A. BACKGROUND**

In January of this year I received an e-mail request from the Applicant in which he asked that I review the response he had received to an access request he had made to the Department of Culture, Language, Elders, and Youth (CLEY). In the same letter, he outlined circumstances which he feels constituted an inappropriate disclosure of personal information about him to third parties.

The Applicant was an employee of the Government of Nunavut, but not of CLEY. From the information I have, it appears that CLEY received information about something that the Applicant was alleged to have done in his capacity as an employee of the Department of the Environment (although it is not entirely clear and it may have been done outside the scope of his employment) which they took exception to and which they considered to be contrary to law. A series of letters went back and forth between the Department of CLEY and the Applicant. There were two individuals within CLEY who were involved in the correspondence, who I will refer to as "A.B." and "C.D." for the purposes of this review. Copies of this correspondence appears to have been fairly widely distributed in the form of "carbon copies" to the Deputy Minister in the Applicant's department, to the Applicant's own supervisor, and to a senior executive with a non-governmental corporation with which CLEY has an ongoing relationship. This correspondence contained allegations about inappropriate and allegedly illegal conduct on the part of the Applicant. The Applicant adamantly and unconditionally denies the truth of the allegations and has described them as "malicious, slanderous and defamatory". It does appear from the records that I have been able to review that there was no investigation done and that the allegations were, at the time of the correspondence in question, therefore unproven.

I will make no comment whatsoever about the dispute between the Applicant and CLEY or the merits of the allegations made in the correspondence in question. That is for another forum. My role is to determine firstly whether the public body provided the Applicant with an adequate response to his request for information and secondly whether the Applicant's privacy rights have been breached either in the manner of dissemination of the correspondence (by fax machine) or in the fact that CLEY shared the correspondence inappropriately with third parties.

With respect to the "access" side of this request, the Applicant is satisfied with most of the response he received to his request. He says, however, that he has not been provided with any documentation to show the status of A.B and C.D in regard to any specific authority either of them might have in law under Section 51 or 52 of the Nunavut Act, under the Nunavut Archaeological and Palaeontological Sites Regulations, under the Historical Resources Act or under any other lawful authority. This was one of his specific requests.

On the "breach of privacy" side of his request, he questions why copies of a letter written by A.B. containing allegations about the Applicant's wrongdoing, were sent to his supervisor, to the Deputy Minister of his department and to the outside agency. Further, he alleges that the correspondence to all individuals involved was sent via insecure fax machines where the correspondence and the allegations contained therein could be read by any passers by and this was an inappropriate way to send this kind of record, which contained his personal information.

In undertaking this review, I requested and received a response from the Department of CLEY. The Applicant was invited to respond to the submissions from the Department and he did so. He indicated that he intended to provide a further response as well but in the end, decided not to do so. He confirmed that by e-mail to this office on October 28<sup>th</sup>.

## **B. ISSUES**

There are, in my opinion, three issues which arise in this Request for Review.

The first is whether the Applicant's Request for Information was fully responded to. Specifically, is there any evidence that there are or should be additional documents which confirm what, if any, legal authority A.B. and C.D. had to undertake the function of policing and protecting archeological artifacts and what, if any, authority they had to specifically take action against the Applicant for his alleged activities.

Secondly, was the Applicant's personal privacy breached when A.B. sent copies of the correspondence in question to third parties?

Thirdly, was the Applicant's personal privacy breached by the method of delivery of the correspondence in question by fax transmission?

## **C. DISCUSSION**

- 1. Did the Applicant receive all responsive records with respect to his request for records showing what legal authority A.B. and C.D. had in relation to their ability to deal with allegations of wrongdoing by the Applicant.**

With respect to this issue, the public body refers me to a section of the Nunavut Act which deals with the protection of artifacts and fossils. These provisions set out a number of rules about who can possess or sell artifacts and in what circumstances and include a number of prohibitions which prevent the possession or sale of such artifacts by all but authorized individuals. There is nothing in the material which the department provided to me which says who has responsibility or authority to enforce the rules set out. It is fairly clear in the Applicant's request for information that what he is seeking is confirmation that AB and CD had that authority. Is there something in their job

description which makes it their responsibility? Has there been some appointment made under the act or the regulations giving these people the legal authority to enforce the provisions of the Act? Is there something within the Act itself which designates those responsible for the enforcement of the Act? The public body, in its response to me, simply “surmises” that these sections of the Act give the Minister the “legal authority” to police the Act and that A.B. and C.D., being responsible to the Minister, thereby have concurrent authority. That may well be so, but it may not be. There must be some documentation somewhere which designates who is responsible for enforcing the Act in question. I agree with the Applicant that this part of his request for information has not been complied with. He has asked for any written documentation which specifies that AB and CD (or either of them) has legal authority to enforce the provisions of the Act and the regulations in question. If there is no such document, the Applicant should be advised at least as to what steps were taken to find the requested information.

**2. Was the Applicant’s personal privacy breached when A.B. sent copies of the correspondence in question to third parties?**

The first thing to consider in answering this question is whether the correspondence in question contained the personal information of the Applicant. If not, then his privacy could not have been breached.

As it pertains to this complaint, personal information is defined in the *Access to Information and Protection of Privacy Act* as:

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,....
- (g) information about the individual’s educational, financial, criminal or

- employment history,
- (h) anyone else's opinions about the individual,

The Applicant's complaint relates to a letter from A.B., a senior employee with the Department of Culture, Languages, Elders and Youth, which is addressed to the Applicant. The letter, dated October 21<sup>st</sup>, 2004, is addressed to the Applicant in his capacity as an employee with the Government of Nunavut. The Applicant was not employed with the CLEY. It appears that the letter was written to the Applicant with respect to something he did in his capacity as an individual, not in his capacity as an employee, so it is unclear why the letter was addressed to him at his place of employment. Be that as it may, the letter contains a number of accusations of wrong doing by the Applicant. The letter refers to a "violation of legislation" and cites the Nunavut Act, the Nunavut Archaeological and Palaeontological Sites Regulations and the Nunavut Land Claims Agreement. It demands that the Applicant take certain steps and indicates that "failure to do so will make it necessary for us to take further action in this matter". The letter is copied to

- a) the Applicant's Deputy Minister,
- b) the Deputy Minister of CLEY,
- c) the Applicant's immediate superior,
- d) the Executive Director of a non-governmental organization;
- e) CD, another senior employee of CLEY, with whom the Applicant had apparently had discussions.

In my opinion, the letter contains A.B's opinion about the actions of the Applicant. Because the Applicant had not been charged or convicted pursuant to the legislation cited, it cannot be said that the statements made in the letter are fact. If they are not fact, they can, at best, be an opinion held by A.B.. I am satisfied that much of this letter contains the Applicant's personal information, notwithstanding the fact that it was addressed to him at his place of employment and directed to him as an employee and not as a private individual.

The next question then becomes whether A.B. breached the Applicant's privacy by disseminating it as widely as he did through copies. Section 48 of the Act sets out when a public body can disclose personal information. Specifically, the relevant sections of section 48 are as follows:

- 48.** 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 the Northwest Territories or a public body has against any person;...
  - (e) to a public body or a law enforcement agency for law enforcement 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;....
  - (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;....
  - (u) for any purpose in accordance with any Act that authorizes or requires the disclosure; or.....

In order to determine whether any of these applies, we have to look at the provisions individually.

- (a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;

The information about the Applicant which is contained in the letter of October 21<sup>st</sup> was collected largely from the Applicant himself, who went to CLEY to consult with them about what to do about an article which had come into his possession and which

appeared to him to be of archeological importance. The reason he gave the information to CLEY appears to have been to seek advice about how to deal with the matter. So the question then becomes whether the disclosure of this information to all of the copied individuals was necessary to meet this purpose. The answer to that is very clearly “no”.

- (b) where the individual the information relates to has identified the information and consented, in the prescribed manner, to its disclosure;

There is no doubt that the Applicant in this case did not consent to the disclosure of his personal information beyond the person to whom he spoke to at CLEY. He most assuredly did not contemplate that he would be accused of wrongdoing or that the allegations would be widely shared.

- (c) for the purpose of enforcing a legal right that the Government of Nunavut or a public body has against any person;

The public body might suggest that they disclosed the Applicant’s personal information in order to enforce the provisions of the Nunavut Act. But what legal “right” are they enforcing? The provisions of the Nunavut Act and the regulations that were referred to me did not result in any legal rights being given to the Government of Nunavut. Rather, they create prohibitions against individuals in Nunavut doing certain things.

Furthermore, even if it were the case that it could be suggested that the Government of Nunavut had a “right” that was being enforced in this case, how did the disclosure to the various individuals who received copies of the letter advance that right? It did not. The disclosure merely served to inform. There was nothing on the file to suggest to me that any of those individuals who received a copy of the letter were in a position to take any steps to enforce any right or that it was the intention of A.B. that any of them take any steps to enforce any right.

- (d) to a public body or a law enforcement agency for law enforcement purposes;

None of the parties to whom the letter was copied could be said to be a “law enforcement agency”. Furthermore, there is nothing in the material before me to suggest that the purpose of the disclosure was for the purpose of ensuring that steps were taken to enforce any law. From my perspective, the copies were sent for the sole purpose of “informing” the various individuals that the Applicant had done something that A.B. considered inappropriate and there was no intention that any of these individuals would take any action based on the letters received, except maybe in the hopes that he would be disciplined by his employer, which is not a law enforcement issue.

- (e) 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;

Although it is conceivable that the information in the letter might be needed by the Deputy Minister of CLEY for the performance of his duties, the department made no suggestion to me that that was the case. Rather, what they did say was that the Deputy Minister (and legal counsel) vetted the letter before it was sent. I am prepared to accept, as well, that the information in the letter may have been required by C.D. so that she could do her job. This, however, was not argued by the department and it is clear that C.D. already had all of the information contained in the letter as the Applicant first approached her with his question about how to handle the situation. The public body justifies the copies to the Applicant’s immediate supervisor and his Deputy Minister to the Applicant’s use of his government e-mail and official signature block in his capacity as an employee of the Government when dealing with this issue. However, the letter of October 21<sup>st</sup> appears to be the opening salvo in the correspondence which went back and forth on this matter. The first e-mail from the Applicant came the day after he received the October 21<sup>st</sup> letter. He cannot, therefore, be said to have opened the door to the wider dissemination of the letter himself. There was no apparent reason at all for either the Deputy Minister of the Applicant’s department or the Applicant’s immediate supervisor to receive the letter in question. They certainly did not need it to perform their duties.

- (f) 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;

The public body says that they had an obligation to share the letter with the Executive Director of the non-governmental organization as a result of the relationship between the Nunavut Land Claims Agreement and the Nunavut Archaeological and Palaeontological Sites Regulations. They say that as a result of these enactments CLEY and the Inuit Heritage Trust (IHT) “share title” to archaeological artifacts and that CLEY was, therefore “obligated” to keep IHT informed of activities and actions taken. I do not question that CLEY and IHT “share title” to archaeological artifacts in the Nunavut Land Claims area. I was not, however, provided with any agreement or other documentation which requires CLEY to disclose allegations of wrong doing to IHT when those allegations have not been substantiated. Was it necessary to send a copy of the letter in question to IHT “for the purpose of complying with a law of the Territories or Canada or with a treaty, agreement or arrangement made under a law of the Territories or Canada”? I am not satisfied that it was. I have not been pointed to any specific law or agreement which requires the Government of Nunavut to share information with IHT. All I have been provided with is some fairly non-specific background information which confirms that there is a shared title. That does not necessarily mean joint management and it does not necessarily mean that the Department has carte blanche to disclose an individual’s personal information. I am not satisfied that it was necessary to disclose the allegations made about the Applicant with IHT in this instance.

- (g) for any purpose in accordance with any Act that authorizes or requires the disclosure

The department has not pointed me to any Act that would authorize or require the public body to disclose the Applicant’s personal information by means of providing copies of this letter in the manner outlined.

In summary, none of the provisions of section 48 would justify the department sending a copy of the October 21<sup>st</sup> letter to the Applicant’s supervisor or the Applicant’s Deputy

Minister. Nor is there anything that would justify the department sending a copy of the letter to the outside agency. There is some justification for a copy of the letter being sent to the Deputy Minister of CLEY and to C.D, but this has not been properly verified by the public body.

3. Was the Applicant's personal privacy breached by the method of delivery of the correspondence in question by fax transmission?

The Applicant complains that the October 21<sup>st</sup> letter was disseminated to the various recipients by "public" fax machines. The department does not address this allegation. Unfortunately, as a result, I cannot know how the letters were delivered or, if sent by fax, who had access to the fax machines or how public the fax machines were.

It is a fact of modern business, especially in the North where mail delivery in remote communities can be less than dependable and relatively slow, that fax machines are going to be used to deliver correspondence, even when that correspondence is confidential in nature. I have addressed this issue before, with another department. In Review Recommendation 05-16 I noted that it is the responsibility of public bodies to maintain the confidentiality of personal information and communications. 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. Fax machines should be located in closed rooms, accessible only by departmental staff. When sending records containing sensitive or personal information by fax, public bodies should take steps to ensure that the fax receiving the transmission is not open to large numbers of people. This may require a telephone call to the recipient to ensure that they are close at hand and can pick it up immediately. When transmitting personal information, it is important that the mode of communication be such that the information is as secure as it can be. This is an issue that needs to be dealt with on a government wide basis. It simply requires that some thought be given to the protection of personal privacy when transmitting records by fax or, for that matter, by e-mail.

## C. RECOMMENDATION

In view of the above discussion, I make the following findings and recommendations:

- a) the public body failed to comply fully with the Applicant's request for information. I recommend that steps be taken to provide the Applicant with a copy of any documentation which would show what legal authority A.B. or C.D. had under the Nunavut Act or the Nunavut Archaeological and Palaeontological Sites Regulations to enforce either of those enactments. If there is no such record, that information should also be provided to the Applicant.
  
- b) by sending copies of the letter of October 21<sup>st</sup>, 2004 to the Applicant's Deputy Minister, to his immediate supervisor and to the third party non-governmental organization, the public body wrongfully breached the Applicant's privacy. Obviously, a breach of privacy cannot be undone. However, in this case, the dissemination of the letter may have had a negative affect on the Applicant's professional standing. Steps should be taken to correct that error as far as is possible by writing a letter to each of these recipients acknowledging that the letter should not have been copied to these parties and that the contents of the letter should remain confidential. A letter should be sent to the Applicant with a full and complete apology for the improper disclosure of his information to unrelated third parties. Furthermore, if any of the correspondence in relation to this issue found its way to the Applicant's personnel file, a copy of the letter of apology to the Applicant should be placed on his personnel file as well. I would leave this to the determination of the Applicant himself.
  
- c) all public bodies should create a clear and unambiguous policy with respect to the sending of copies of letters. Such policies should be in

writing and should be enforced in all cases. In terms of records containing personal information, extra care should be taken to ensure that copies are sent only to those who truly need the information to perform their duties or where disclosure is otherwise allowed pursuant to section 48 of the *Access to Information and Protection of Privacy Act*.

- d) all public bodies should review their policies with respect to the use of fax machines for the delivery of sensitive information and should clearly outline when delivery by fax machine is inappropriate. All departments should also look closely at the location of their own fax machines to avoid, as far as possible, inappropriate disclosure of personal information.

**Elaine Keenan Bengts**  
**Nunavut Information and Privacy Commissioner**  
October 31, 2005