

NUNAVUT INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 08-045
November 13, 2008
Review File: 08-140-5

A. BACKGROUND

On February 28th, 2008, I received a request from an individual who was concerned about whether or not his personal records, in particular his Financial Assistance for Nunavut Students (FANS) records, had been inappropriately used or disclosed to third parties. The Complainant alleged that on two occasions when he received certain forms for his completion, the documents he received were partially completed but with another person's personal information. The Complainant indicated that he pointed the error out to the FANS administrative staff but was not satisfied that any appropriate action had been taken to address his concerns.

He was doubly concerned about the condition of his file when he was briefly put "on probation" by FANS, which eventually was revoked as an error. He was hoping to find what it was on his file that had caused him to be put on probation in the first place as he was concerned that information about other individuals may have been improperly put on his file and used to assess his situation. The Complainant was also concerned about the apparent lack of concern demonstrated by FANS employees when he raised his concerns about the state of his records.

I provided the Department of Education with a copy of the complaint and the background information which had been provided by the Complainant and asked for an explanation. In their response, they acknowledged that the file was incomplete and they had had some records management problems which had affected a number of student records, including the Complainant's. Specifically, they said:

While this file may appear to be incomplete, the entire file in possession of the Department of Education, FANS Office was enclosed. The

Department is currently dealing with an occurrence of some FANS files being incomplete. The issue has been identified by the Office of the Auditor General for a number of FANS files (including [the Complainant]), and mitigation measures are currently in place to ensure this type of event does not occur again.

There was also some indication in the records which I received during the course of the review investigation that a number of records had gone missing during a transfer between offices and there is no indication that those records were ever recovered.

The department further indicated that following concerns raised about the administration of the FANS program expressed by the Auditor General, over two dozen recommendations had been made regarding administration and procedures and an action plan had been implemented to correct the problems in the system and improve records management. This plan included some of the following items:

- a) a revised student record keeping system to ensure documentation and communications with students is accurate and timely;
- b) training for staff in the areas of financial management, record keeping, privacy and database management;
- c) focused attention on the Auditor General's report concerning loans.

With respect to the possibility that someone else's personal information had been mistakenly put on the Complainant's file and used to make decisions about his eligibility for FANS funding, the public body denied that this was the case.

They acknowledged that poor practices had resulted in the Complainant being provided with a form that had someone else's personal information included on the form by mistake. The problem arose from the practice of not using the same template each

time but of taking completed electronic forms, removing the information in the forms, and sending the "blank" form on to be completed by another individual. The public body indicates that that issue was addressed immediately upon the receipt of the Complainant's original request with a directive that the proper usage of blank templates was to be strictly followed. I am satisfied that this issue has been addressed. However, there was no indication that the Complainant had been advised of the steps that had been taken or even that his concerns had been addressed until the correspondence received in my office as a result of this review.

The Applicant was asked if he had any further response to the submissions made by the Department, but none were received.

DISCUSSION AND RECOMMENDATIONS

It appears that in this case the public body has recognized that there are problems with its record keeping system as a result of a separate report prepared by the Auditor General's Office and that they are taking steps to address the problems. Furthermore, there is also no evidence before me to suggest that the Complainant's personal information was improperly used by the Public Body. Be that as it may, this review did raise some significant concerns about the record keeping issues within the Public Body such that I can easily envision a situation in which an individual's personal information may well go astray and be improperly used or disclosed, either intentionally or unintentionally, to third parties. I can understand the Applicant's frustration in dealing with the system, as it does appear that his concerns were treated callously and somewhat flippantly. Furthermore, the department admits candidly that it seems to have lost or misplaced certain records within the FANS system, including those of the Applicant. This is unacceptable but little can be done retrospectively to correct the situation other than to recommend strongly that measures be taken to find the missing records and to recover them. Clearly, the Auditor General shares my concerns and it is my hope that the record keeping issues have been or will be resolved quickly and the new system incorporated quickly.

I would make the following additional recommendations:

- a) that all employees working within the Government of Nunavut who are likely, for any reason, to come into contact with the personal information of members of the public, particularly in areas such as health, education and housing, should be provided with some basic training in access and privacy issues as a mandatory part of orientation. This training has to go beyond the basic “confidentiality is important” policies. It has to include an introduction to the Act, training in what is and is not appropriate to disclose and in what circumstances, how to avoid inappropriate and unauthorized disclosures, the importance of good record management, physical security measures and policies in place to address these issues, and who within the department is ultimately responsible for access and privacy matters so that issues can be referred to them when issues arise.

- b) government agencies which hold significant amounts of personal information, such as health, education and housing, should have someone designated as the “chief information officer” whose responsibilities go beyond simply acting on access and privacy matters, and include the management of records, record keeping and the security of records. This person must have sufficient seniority and authority to act when issues arise, to create rules, policies and guidelines for the handling of records and to have responsibility generally over records management.

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner