

**NUNAVUT  
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 09-047  
February 3, 2009

Review File: 08-180-5

**A. BACKGROUND**

On July 18<sup>th</sup>, 2008, I received a request from the Complainant to review issues concerning the security of personal information within the Department of Education, and in particular, the Funding Assistance for Nunavut Students (FANS) program. The complaint arose after the Complainant asked for copies of information from his FANS record and, in doing so, brought problems to light respecting the general management of FANS records. It appeared from the correspondence that was exchanged as a result of that request, that the Complainant's file or portions of his file had been missing or lost, although the Complainant had not been informed of the problems with his file until he asked for access to his records. A report by the Auditor General which strongly criticized the record keeping system of the FANS program supported the Complainant's concerns. The Complainant was concerned because the information collected by the FANS program was sensitive and was provided by him in confidence, and included such things as bank account numbers, his social insurance number, his date of birth and contact information. He was, furthermore, concerned that something be done to locate and recover the apparently missing records.

**DISCUSSION**

The public body in this case acknowledged that some of their FANS client records were not in good order and that certain steps were being taken to correct the problems as a result of the report prepared by the Auditor General in which the records management system was criticized. In undertaking this review, I asked the public body to address

the following questions:

- a) when did the records go missing?
- b) how were the records lost?
- c) when and how was it discovered that the records were missing?
- d) what steps, if any, have been taken to find and/or recover the missing records?
- e) have the missing records ever been found?
- f) if recovered, is there any indication where they were while missing, and whether anyone had access to them, whether authorized or not?
- g) if they have not been recovered, what ongoing efforts are being made to locate and repatriate them;
- h) what, if any, efforts are being made to ensure that this kind of thing does not happen again?
- i) how and when were FANS clients advised that some of their records might be missing?
- j) have all the files been reviewed to ensure that the current information in them is now complete and accurate?

The reason that the Complainant was concerned about the possibility that his FANS file, or parts of it, had gone missing is because his earlier ATIPP request for the contents of his file suggested that there were missing records. In dealing with that issue, the public body made the following comment:

In response to the review request statement that the file for [the Complainant] was not included in the package provided to [him], all parts of the file were located in the package provided (p. 164-205). While this file may appear to be incomplete, the entire file in possession of the Department of Education, FANS Office was enclosed. The Department of Education is currently dealing with an occurrence of some FANS files being incomplete. This 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.

This, when taken in context with other records, suggested that a number of FANS files had gone missing when being transferred from one office to another and the implication was that the Complainant's records were among those that had been lost.

In its response to this Request for Review, however, the public body denied that any records had ever been lost. Instead, they say, there were simply problems with the filing system such that the files were not "lost" but simply "inaccessible".

As far as FANS information (sic) no record is missing for the client. The Office of the Auditor General (OAG) noted that filing was inadequate, with information in piles or filed in a decentralized and ad hoc manner so that it was difficult to find all the relevant information on a specific student. The information was therefore not missing, but inaccessible.

In my opinion, this is an exercise in semantics. The fact of the matter is that the Complainant's file was missing certain documentation which the public body could not put their hands on. That the documents containing that information was still in the possession of the public body is somewhat reassuring, but does not change the fact that the records were "lost" to the public body and to the Complainant, at least until the file review was undertaken in response to the Auditor General's report and record management changes came into effect. Section 42 of the *Access to Information and Protection of Privacy Act* puts a positive onus on public bodies to keep records containing personal information safe and secure. This, in my opinion, includes knowing where they are at any point in time and ensuring that they are not, intentionally or unintentionally, open to wrongful use or disclosure. Just as importantly, and as the Complainant pointed out, if all of the information about him was not on his file, and

decisions were being made about his eligibility for funding, those decisions could have been affected by the absence of relevant information. If the public body knows it has certain information about an individual, but doesn't know where to find that information or how to access the record, it is as good as lost.

It does, however, appear that steps are now being taken, which are being monitored by the Auditor General's Office, to ensure a more accurate filing and document management system so that, in the future, there should be no cause for records to be "inaccessible". In particular, the public body indicated in its response to me that:

The OAG recommended better filing practices and the Department agreed. Files are now maintained by student in a secure location, with a focus on keeping up-to-date on filing

My understanding of this statement is that each student now has his/her own file (which apparently was not the case previously), the records are being kept in a secure location and an effort is being made to keep all the information on the files current.

In response to my request that the public body address whether the missing records had been recovered, the public body indicated that as a result of the steps taken in response to the Auditor General's Report, the public body was confident that all FANS files were now "quite complete" as everything had been properly filed and older files had been "reconstructed". They repeated that no files had been "lost". All of the records were in the office, but simply not properly filed or organized. Furthermore, they say that because the "recovered" files had been in the office all along, there was no unauthorized staff that might have had access to the "missing" records.

Again, I think that whether these files were misplaced within the office or misplaced in the course of some kind of transfer of records outside of the office does not change the obligation on the public body to keep records secure or to keep them from being seen

by unauthorized individuals. Records containing personal information should be accessible only to those staff members who have a need to see the information to perform their job function. The situation described by the public body suggests that the security of the records in the office was deficient, to say the least. It appears that many records were unfiled and laying around in piles or on desks, open to view not only by every staff member in the office, whether they had a need to see the information for the purpose of undertaking their job or not, but to anyone else who might walk through the office, from janitors to visitors to uninvited guests. Just because a record does not leave the public body's office does not mean that it is secure from inappropriate use or disclosure.

The Complainant in this case also felt that he should have been advised that there were records apparently missing from his file. In fact, in response to the Auditor General's report, the Department did put an ad in the local newspaper advising all FANs recipients advising that a detailed review of all client files would be taking place to ensure completeness and accuracy and that clients with outstanding loans would be contacted with respect to their obligations for repayment. The ad contained an e-mail and telephone number where students could obtain further information about the file review. The public body also wrote directly to the Complainant in this case in response to his concerns and provided him with more detail. In that letter, the public body indicated some of the specific recommendations which had been made by the Auditor General, including:

- a) organizing all student records into individual student files;
- b) placing all paper copies of student records into locked filing cabinets;
- c) adopting and enforcing strict protocols on e-mail communications and disclosure of personal information;
- d) adopting and enforcing strict protocols on requests for student information requiring direct student requests or a signed consent from the student to share information with parents;
- e) providing staff with Access to Information and ARCS (record keeping) training;

and indicated to him that the recommendations were being implemented.

There is currently a significant amount of debate among the privacy community surrounding whether there should be mandatory breach notification when electronic or other records go missing and the information might be used by an unscrupulous individual for identity theft or other illegal purposes. I do not, however, propose to enter that debate here. There is no evidence in this case that any record was ever inappropriately used or disclosed, nor did the records ever, apparently, leave the FANS offices. The possibility, therefore, that there was an actual privacy breach such that the Complainant's personal information is in jeopardy of being used for purposes other than what it was collected for is remote. In my opinion, in the particular facts of this case, there was no reason to advise the Complainant or any other student individually that their personal information was at risk of being improperly used or disclosed.

### **RECOMMENDATIONS**

It appears that the problems which led to the Complainant's concerns in this case have been largely addressed or are in the process of being addressed, under the watchful eye of the Auditor General's Office. I am satisfied that her office will ensure that the record keeping regime in the FANS office is changed in a manner that satisfies the need to ensure that records are both accessible and secure. I remain concerned, however, that the department still does not appear to understand that lost records, whether they are "lost" internally or externally, is not an acceptable state of affairs. To essentially shrug this situation off as not something to be concerned about is not acceptable. Lost records, or records which are "not accessible", are not being properly managed in accordance with the obligations imposed by the *Access to Information and Protection of Privacy Act*. The solution requires more than simply a change to the way in which the records are handled. It requires a shift of the mind set of those who are dealing with the records, of those who are their supervisors and of management all the way to up to the Minister of Education. There must be direction from the top which emphasizes the importance of protecting personal information collected by a public

body from improper use or disclosure. There must be a realization and understanding on the part of all members of the public body that information about other individuals is provided on the understanding that the public body will use it only for the purpose it is collected and will take steps to ensure that it is secure from view from all but those who absolutely must see the information for the purpose of undertaking their assigned job tasks. I have recently recommended to this public body as a result of an earlier review that they make efforts to ensure that all of their employees, and particularly those who work with the personal information of others on a daily basis, are well educated and trained with respect to their obligations under the *Access to Information and Protection of Privacy Act*. I would simply repeat those recommendations here and encourage the public body to be more pro-active with respect to these issues and make this a priority for its staff.

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