

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 10-051
December 10, 2010

Review File: 10-160-5

BACKGROUND

The Complainant in this case asked me to review whether or not his personal privacy had been breached by his former employer, a public body operating in a small community. According to the Complainant, his former supervisor disclosed to various persons that his employment had been terminated and that, as a result of this unreasonable breach of his privacy, he suffered not only unnecessary embarrassment, but financial damages as well.

Specifically, the Complainant accuses his former supervisor of:

- a) advising the local health center that he was no longer an employee resulting in the threatened cancellation of pending medical health travel

- b) advising one of her relatives who worked for a transportation company in the small community in which the Complainant lived, that he had been fired, resulting in the refusal of the transport company to accept his household goods for shipment without cash up front. This transportation company is a private sector company which acts as an agent for First Air in the community in which the Complainant was employed.

The complaint was received in my office on June 14th, 2010. On June 17th, I advised the public body of the complaint and asked for a response within 30 days. The public body responded that the person who was alleged to have made the unauthorized disclosure was away from the office on holidays until September 7th. Although they

were encouraged to contact him so as to allow them to respond in a reasonable period of time, they were not able to do so and I did not receive a response until September 23rd. The Complainant was provided with a copy of the public body's submissions and invited to provide a response. No response was received.

ISSUE

The issue here really breaks out into two questions:

- a) did the Complainant's supervisor disclose the Complainant's personal information and, if so, to whom?
- b) if so, was that disclosure authorized pursuant to the Act?

THE PUBLIC BODY'S POSITION

The public body tells a very different story from the Complainant. With respect to the first "disclosure" to the health centre, it is their position that the Complainant himself told the health centre his job had been terminated. The public body alleges that the Complainant took a letter he had received from the employer about his job status and showed it to the medical personnel in the health centre. The health centre, in turn, contacted the employer to determine whether, in fact, the Complainant had been terminated. According to the employer, the health centre was advised that they were unable to comment on the issue. The Complainant's supervisor said that the Complainant was "waving the letter around - yelling at the medical travel staff and intimidating them", although there is no indication as to how he would know that. I am assuming that the Complainant's supervisor's place of employment was not the same place as the health centre. I can only assume, therefore, that he was advised about the Complainant's behavior by a third party who was actually present and saw the Complainant's actions.

It is the public body's position that the supervisor in fact attempted to assist the Complainant with respect to his medical travel by trying to arrange for travel assistance for the Complainant in his capacity as a resident of Nunavut, rather than as an employee. This was done, apparently, after the Complainant was advised by the health centre that he would have to pay up front for the travel and then seek reimbursement because of his employment status. In the end, it turns out that the Complainant did, in fact, travel south for medical reasons and that his expenses were paid.

With respect to the second alleged breach, it is the public body's position that the Complainant first contacted the employee of the transportation company and "demanded" that they pack up his personal belongings. According to them, the Complainant advised the employee that he had an agreement with First Air to remove his personal effects to Edmonton, collect. They say that later the same day, the Complainant himself contacted the transportation company again and insisted that they contact his former supervisor to obtain a Visa number to charge the transportation freight costs to. When the transportation company called the public body, they say that the supervisor simply advised that he did not have the authorization to provide that information (i.e. the corporate Visa number for the public body). Essentially they say that whatever information was given to the transportation company came directly from the Complainant.

It is clear from the submissions received from the public body that they were not impressed with the way in which the Complainant conducted himself after being advised of his pending termination. A number of comments in their submissions were focused on the Complainant's actions which were, perhaps, less than exemplary. That said, however, it is not terribly relevant to my review.

DISCUSSION

There is no question but that, if the Complainant's supervisor advised anyone outside of his department about the Complainant's employment status, that he would be in breach

of the Act. Sections 47 and 48 of the Act outline when personal information, such as employment status of an employee, can be disclosed to a third party. Essentially that includes:

- (a) the purpose for which the information was collected or for a purpose the individual consented to;
- (b) for certain internal purposes relating to Government administration or law enforcement;
- (c) when necessary to protect the mental or physical health or safety of any individual or to advise next of kin of an accident or death; or
- (d) where the information is otherwise available to the public.

None of these apply to the situation at hand. If the supervisor disclosed the information as alleged, he did so contrary to the Act. In a small community, such as the one in which the Complainant worked, it is extremely important for employers and people in the workplace not to talk about matters which happen at work other than in the narrow confines of the workplace. This is sometimes difficult, particularly where, as here, the Complainant was being difficult and doing his own anti-government public relations campaign. Let there be no mistake, however, that no matter what the provocation, it will not be sufficient to allow the disclosure of personal information contrary to the Act. Although the public body may have been frustrated with the Complainant's behaviour, they were still required by the Act to maintain the confidentiality with respect to the Complainant's employment status.

As it is, in this case I cannot say one way or the other how the information about the Complainant was disclosed....whether the Complainant did it himself or whether there was an assist in one or more instances from his supervisor. I do not wholly accept either the Complainant's explanation or the public body's explanation for how

information about the Complainant's work status became known in the community, although I accept that the health centre and the transportation company both became aware of the matter in some way. I would suggest that the Complainant in this case probably did himself no favours in the way that he conducted himself and that his words and actions may well have had the effect of disclosing the fact that his employment was in jeopardy, even if he didn't actually say it in so many words. In very small communities, it is very difficult to keep secrets of any kind. It is therefore even more important in these communities that extra care be taken to protect employee information and to emphasize to supervisors again and again that this kind of information must remain confidential, particularly in terms of casual remarks made outside of the work place, whether in passing or in some other context.

In the circumstances, and with the information available to me, I cannot conclude that the public body breached the Complainant's privacy in this case.

RECOMMENDATIONS

In light of my finding that there is not enough evidence to conclude that the public body wrongfully disclosed the Complainant's information, I make no specific recommendations. I would, however, use this case as an example and hold it up as a cautionary tale for the future. It can clearly be used as a learning tool. To this end, I would make a very general recommendation that all managers and supervisors in Government of Nunavut offices should have a basic knowledge and understanding of their obligations under the Access to Information and Protection of Privacy Act

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner