

**NUNAVUT  
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 14-072

February 27, 2014

Review File: 13-185-5

**BACKGROUND**

This review arose out of a request made by a tenant to the Taloyoak Housing Authority for access to records. The original request for review was made to my office because the Housing Authority had not responded to the tenant's Request for Information within 30 days as required by the *Access to Information and Protection of Privacy (ATIPP) Act*. The Applicant later withdrew his application for a review after belatedly receiving the requested information. The Applicant, however, did ask that I continue my review with a view to making some determination or finding with respect to whether or not Housing Authorities and Housing Associations created pursuant to the *Nunavut Housing Corporation Act* are, in fact, subject to the ATIPP Act.

Both the Nunavut Housing Corporation and the Taloyoak Housing Authority were invited to provide their comments and perspective on the issue, but no submissions were received.

**DISCUSSION**

The *Nunavut Housing Corporation Act* contemplates two kinds of satellite organizations being established to work with the Nunavut Housing Corporation to achieve the Corporation's goals - Housing Authorities (like the Taloyoak Housing Authority) created by the Minister responsible for the Housing Corporation, and Housing Associations, which are self-incorporated. These organizations, it appears, are intended to undertake the "on the ground" work of the Nunavut Housing Corporation in Nunavut communities. The narrow question that I have been asked to address is whether or not these entities are subject to the ATIPP Act.

In order to answer this question, we must refer to the ATIPP Act itself.

The purposes of the *Access to Information and Protection of Privacy Act* are set out in Section 1 of the Act which provides as follows:

1. The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
  - (a) giving the public a right of access to records held by public bodies;
  - (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves held by public bodies;
  - (c) specifying limited exceptions to the rights of access;
  - (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and
  - (e) providing for an independent review of decisions made under this Act.

These purposes are important to keep in mind. Historically, this kind of legislation was intended to encourage openness in government and to allow the public to be in the position to see how tax dollars are spent. It is one of the methods democracies use to encourage openness and accountability in the use of public funds and in governance.

Section 3 of the Act goes on to define which records are subject to the Act. It says:

3. (1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following: .....

It is to be noted that none of the exceptions listed in the balance of Section 3 apply in this case.

The term “public body” is defined in section 2 as:

- (a) a department, branch or office of the Government of Nunavut, or
- (b) an agency, board, commission, corporation, office or other body designated in the regulations,

The regulations under the Act include a list of the government agencies which fall directly under the Act. This list includes the Nunavut Housing Corporation (NHC). It does not specifically name any Housing Authority or Housing Association (collectively referred to as Local Housing Organizations (LHO's)). This might be interpreted as meaning that LHO's are not, therefore, public bodies under the Act.

In my opinion, however, this is not necessarily the end of the inquiry. As I read the *Nunavut Housing Corporation Act*, the Minister responsible for the NHC may, by order, incorporate housing authorities "for the purpose of carrying out agreements entered into under this Act for the administration, operation and maintenance of housing units or housing projects". The Minister appoints all members of those authorities and the Minister is the one who determines what powers and authority the Housing Authorities have. Housing Associations appear to be somewhat more autonomous, as they are self-incorporated, but the Minister is still the authority who decides what "powers, functions and duties" these associations have. While it is not entirely clear from the legislation or what I could determine from my research, it also appears that all LHOs are funded exclusively or almost exclusively by the Government of Nunavut or the NHC and therefore use public funds. They do not appear to generate profits. They are, I gather, also required to report to the NHC on an annual basis with respect to their financial circumstances and their general progress in meeting the NHC's goals, if not on their day to day activities.

All LHOs are, at a minimum, contractually controlled by a public body as defined under the ATIPP Act (the NHC) and report to that public body. In these circumstances, it

would be my opinion that records created and retained by an LCO are "under the control of" the NHC. The NHC is in a position to demand the production of the LCO's records for accountability purposes.

Unfortunately, I did not receive a copy of any contract between the NHC and an LHO so that I do not have the benefit of knowing the specific provisions of those contracts which might apply to this issue. I have to assume, however, that the LHO's are contractually bound to comply with all Nunavut legislation and that the contracts also specifically provide that the LHO is subject to the provisions of the ATIPP Act. If that provision is not currently part of the contractual arrangement between the NHC and LHOs, that should be remedied immediately. However, regardless of whether that actual provision exists in the relevant contracts, the nature of the relationship between the NHC and the LHO's is such that, in my opinion, the NHC has the necessary "control" over records simply from the nature of the relationship. In other words, if one were to make an Access to Information request for records in the possession of an LHO, the NHC has the requisite control over the records necessary to require a full response. Furthermore, in my opinion, LHO's are responsible, as public bodies, for the appropriate collection, use, disclosure and security of personal information in their possession.

Because I did not receive any submissions from the Nunavut Housing Corporation, I did not receive any explanation as to why LHO's have not been specifically included as "public bodies" in the Regulations to the ATIPP Act. I can think of no reason why they should not be so included. These are not independent organizations. They are seen as "government agencies" by the general public. The *Nunavut Housing Corporation Act* clearly gives the Minister responsible control over what powers and authority the Housing Authorities and Associations have or don't have. They are financially reliant on public funding. They are required to account to and report to the Nunavut Housing Corporation. They are required to undertake their work so as to achieve the policy objectives of the Nunavut Housing Corporation. All of these indicators lead me to the conclusion is that the LHO's are exactly the kind of public organization that the Act was

intended to cover. One can only conclude that they have been omitted from the list of public bodies under the Regulations only as a result of inadvertence.

## **SUMMARY AND RECOMMENDATIONS**

As per the discussion above, I make the following recommendations:

- a) that steps be taken to add all LCO's as "public bodies" in the Regulations under the *Access to Information and Protection of Privacy Act* as soon as possible;
- b) that in the interim, LCO's be reminded about their obligations under the *Access to Information and Protection of Privacy Act*, including their responsibility to name a designated ATIPP Co-Ordinator to play the lead role for the organization for ATIPP issues which might arise;
- c) that training with respect to ATIPP be provided to the ATIPP Co-Ordinators and to management of all LCO's so as to ensure that these organizations fully understand their roles and responsibilities under the *Access to Information and Protection of Privacy Act*.
- d) that the Department of Executive and Intergovernmental Affairs take steps to review the list of "public bodies" listed in the regulations with a view to updating it so as to include all organizations which receive the bulk of their funding through the Government of Nunavut or another public body or who are bound to comply with the policy goals and objectives of a public body.

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