

**NUNAVUT  
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 14-074

July 10, 2014

Review File: 14-132-5

**BACKGROUND**

The Complainant in this case was concerned about a request he received from the Department of Health and Social Services to complete and return a form to verify his personal information for the purposes of his health care coverage. In early 2014 he received a letter from the Department, asking him to complete and return the form attached. This letter was, apparently, sent to many Nunavut households in early 2014. The form, entitled “Nunavut Health Care Household Verification Form” is prefaced with a statement which says that if the form is not completed and returned, the recipient risks having his health care coverage suspended or “end dated”. In the copy received by the Complainant, the form was partially completed with his personal information, including his Health Care number, full name, date of birth, ethnicity and current address. After this, the form asked that the recipient amend the form as necessary to correct any errors. The form then requested a telephone number and an email address, followed by three “fill in the blank” questions:

1. Have you resided at this address for over one year? If no, please provide previous address.
2. Was this form forwarded to you outside of the territory? If yes, please provide your current address outside the territory along with a phone # and/or email address so that we may contact you.
3. Please list all persons (name and date of birth) residing at your current address on the back of the form.

It is this last question which caused the Complainant’s initial concerns.

At the end of the page was a place for the individual to “certify that the primary residence for myself and those listed on the back is correct” with a request for a signature and a date.

On the back of the form was a place to list those “persons permanently residing in household” with a place for names, date of birth and P.O. Box #, if different from the recipient’s.

This created concerns for the Complainant on several levels. Initially the concern was that the department was asking for personal information about non family members who may reside in his home. He did not feel that it was his place to provide this information, nor was it appropriate for the department to be asking him to do so. Finally, the Complainant was very concerned about the threat to suspend or end date his health care coverage should he fail to complete and return the form.

When the Complainant contacted the department by email to express his concerns, the response he received created even more concerns. The department’s response suggested that the form was sent out as part of a “random sampling” of active health care files in order to determine whether the information they had on file was correct, including mailing addresses. This created the additional concern for the Complainant that his personal information had been inserted in the form and sent to him at an address that the department was saying they were not certain was accurate.

## **THE DEPARTMENT’S RESPONSE**

In its initial response directly to the Complainant, the Department provided the following explanation:

The reason we are asking for persons living in the household is because it will help us to be more cost efficient in our mailouts (bundling). This sampling is based on the oldest individual at the resident mailing address, so only one verification notice is sent to that individual. You are not

obliged to fill in the other residents of the household, however when we finish our household sampling, those names associated with the box # for which we have received no confirmation, run the risk of suspension of their health care benefits until further verification is provided. Also many individuals do not change their mailing address on their health care card file when they relocate. In some cases multiple families/individuals have the same box # yet some have long moved and no longer live in the community or even in the territory. Cards continue to get renewed and cards are mailed out to wrong addresses. Although there may be a household grouping, each individual file is secure and receives a unique health care card number for coverage.

The expectation is that persons receiving these notifications will edit any misinformation and fill the remainder of the form out to the best of their ability. It is important to do this as coverage may be suspended until such time as verification is received that an individual is still a resident of Nunavut.

This explanation sets out the purpose for the collection of information and provides an explanation as to why the householder is being asked to provide personal information about third parties. It does not, however, address the Complainant's concerns about the onus being placed on him to provide personal information about people he lives with other than his own family.

In the Department's submissions to my office with respect to this complaint, they began with a reference to section 40 of the *Access to Information and Protection of Privacy Act* (ATIPP Act) which provides that:

40. No personal information may be collected by or for a public body unless
  - (a) the collection of the information is expressly authorized by an enactment;

- (b) the information is collected for the purposes of law enforcement;
- (c) the information relates directly to and is necessary for
  - (i) an existing program or activity of the public body, or
  - (ii) a proposed program or activity where collection of the information has been authorized by the head with the approval of the Executive Council; or
- (d) the collection of the information for research or statistical purposes is authorized by or under the *Statistics Act* .

They further advise that insured medical services are provided by the Department of Health pursuant to the *Medical Care Act* and the *Hospital Insurance and Health and Social Services Administration Act*. The first of these establishes the criteria for health insurance coverage and requires that individuals seeking this coverage must apply for benefits from the Department of Health and that the Department of Health must verify the information in its records to ensure that only eligible persons are receiving insurance coverage.

The Department also referred to section 41 of the ATIPP Act, which provides that a public body must, where reasonably possible, collect personal information directly from the individual the information relates to. They argue, however, that there are exceptions to this as outlined in section 41, including:

- a) where another method of collection is authorized by that individual or by an enactment,
- b) where the information
  - i) is necessary in order to determine the eligibility of an individual to participate in a program or receive a benefit, product or service from the Government of Nunavut and is collected in the course of processing an application made by or on behalf of the individual the information is about, or

- ii) is necessary in order to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Nunavut or a public body and is collected for that purpose.

The Department of Health argued that it has a legitimate need to :

- a) confirm that anyone entitled to Nunavut health care coverage is receiving it and anyone who is not eligible is not receiving it;
- b) verify the eligibility of the individuals and their dependents receiving health care;
- b) verify that the information on their file is accurate.

For these reasons, they say, the department contacts individuals through a computer generated random sampling formula and sends them the Household Verification form, requesting those individuals complete and return the form to the department. They did indicate that, in light of the concerns expressed by the Complainant, they would edit the form to “ensure the basic requirements of the *Access to Information and Protection of Privacy Act*, in particular section 41(2) are met prior to any further verification notices being sent out. Section 41(2) provides as follows;

- (2) A public body that collects personal information directly from the individual the information is about shall inform the individual of
  - (a) the purpose for which the information is collected,
  - (b) the specific legal authority for the collection, and
  - (c) the title, business address and business telephone number of an officer or employee of the public body who can answer questions about the collection, unless the regulations provide that this subsection does not apply to that type of information.

## DISCUSSION

I agree with much of what the Department of Health has submitted with respect to their legal authority to collect relevant information from and about individuals claiming services under the Nunavut Health Care system. I am satisfied that they are entitled to collect information about individuals to confirm eligibility. Where I differ with the department, however, is in its method of collection. There are many ways to collect the information required, and most of those methods of collection would involve collecting the information directly from the individual (or the parent or guardian of a child) rather than from a random person who happens to share a post office box or a household with any number of others.

Section 41 of the Act specifically states that **where reasonably possible**, all personal information **must** be collected directly from the individual to whom it relates. This is not a discretionary matter. While there are exceptions outlined in the Act, the wording of these provisions clearly imply that collection from the individual is the default, where it is reasonably possible. Further, the whole scheme of the Act suggest that exceptions to the default position should be relied on only where collection of the information from the individual would be almost impossible or where the information that might be collected from the individual is likely to be unreliable. While it may be more efficient from the department's perspective to ask third parties to collect the information, that does not mean it is appropriate, or in keeping with the spirit or the letter of the law. There is nothing in the explanation provided to me or to the Complainant which suggests that it would be impossible or even difficult for the department to collect the information directly from the individuals. It could be as easy as having clerical staff verify the information directly with the individual any time an individual seeks medical attention. Or it could be done by sending out a letter to each person in their system, asking them each to verify their information.

Sending one letter to one person at each post office address in the department's system, however, and asking that person to verify the information for every person in their household or who receives mail at that address, is not, in my opinion, appropriate in light of the mandatory nature of section 41. Nunavut is a place where housing is

notoriously limited and it is not at all unusual to find individuals who are totally unrelated sharing accommodations. There are many situations where families take in boarders, or have unrelated room mates or long term guests. Asking someone to provide personal information, including full name and date of birth, about an unrelated third party simply because they live within the same four walls is inappropriate and unfair to both the householder and the unrelated third party whose right to health care coverage might be jeopardized if the information is not provided or is inaccurate. It might be more acceptable to ask one person within each family unit (mother, father, children) to complete one form for everyone within that family, and even then there is no reason why each person over the age of 19 shouldn't be required to verify their own information. But to ask for that information to be provided for every person who resides in the same residence is of a different scope altogether.

I would also point out that section 41(3) provides that when a method of collection "might" result in the collection of inaccurate information, section 41(1) does not apply. I would suggest that it is very likely that inaccurate information would be likely to result by requesting unrelated third parties to provide information which they may, or may not, be normally privy to.

- (3) Subsections (1) and (2) do not apply if, in the opinion of the head of the public body concerned, compliance with them might result in the collection of inaccurate information or defeat the purpose or prejudice the use for which the information is collected.

As a final comment, I agree with the Complainant that the way in which the form is worded, there is an implied threat within the form itself that suggests that if the form is not completely and accurately completed and returned, health care benefits will be suspended or "end dated" for the person to whom the letter is being sent, putting significant pressure on that person to find and provide the information sought. I am guessing that the real intention is to make sure that the person filling out the form knows that if someone is not included in the information provided, the person whose information is not provided is subject to suspension or "end dating". That is certainly not clear from the wording of the form currently.

## CONCLUSION

While I agree with the Department of Health that they are authorized to collect the personal information they are seeking through this form, I do not agree that their method of collection is appropriate or even authorized under the provisions of the Act. Where the information can be collected from the individual to whom the information relates, that is how the Act requires that the information be collected even if that does not strike the department as being the most efficient way of doing things. There are any number of ways that this information can be collected more directly from the individual. Moreover, it is even more inappropriate to threaten to suspend one person's health care benefits for failing to provide personal information about someone who might be nothing more than a room mate or acquaintance. I recommend:

- a) that the Department of Health revise their "Nunavut Health Care Household Verification Form" as follows:
  - i) to request individuals to provide the necessary information to verify eligibility for all family members within a household and to require a signature verification for all individuals over the age of majority;
  - ii) to clarify that health care coverage may be suspended or lost for any family member whose updated information is not provided;
  - iii) to include the information necessary pursuant to section 41(2) of the Act;

There would be nothing to prevent the department from asking for confirmation about whether there are additional people living in the same residence, or even from asking for the names of those individuals, without demanding more information about them. Nor would there be anything to prevent the department from including additional blank copies of the form with a request that they be given to any non family member over the age of 19 living in the home. Beyond this, however, it is my opinion that information

about unrelated third parties who may also be living in the same residence should not be requested or required by the department.

I also recognize the irony of the department's statement that they are sending out these forms, which have been partially completed with individual personal information, to individuals to verify that they have the right postal address for those individuals. In these circumstances, I would also recommend that the department limit the amount of information that is filled in prior to mailing, perhaps to Health Care number and name, leaving the recipient to complete the remaining information. Even this limited amount of information, in the wrong hands, could result in negative consequences. While I understand the need to include some identifying information, the less information, the less likely it is that it can be misused if the form does not get to the intended recipient.

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