

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 14-075

July 11, 2014

Review File: 14-135-5

BACKGROUND

This review arose as a result of a complaint from an individual living in one of Nunavut's small communities. He was upset because, he alleged, an employee of a Local Housing Organization (LHO) posted information about him on his social media site. The only way the individual could have had the specific information posted was as a result of his work with the housing association. The Complainant alleged that the employee who posted the information was drunk when he did so and that the employee removed the post, or most of it, at some point, but only after many people had seen it. He also indicated that the employee later admitted that he had posted the information and apologized for doing so.

I asked the Nunavut Housing Corporation to investigate the matter and provide me with a report.

THE REPORT

In the report, the Nunavut Housing Corporation acknowledged that a privacy breach did, in fact, occur as alleged by the Complainant when private arrears information about a public housing client was disclosed through several posts on a social media website. By the time the investigation was done, the posts had been removed by the employee. The incident occurred some time between February 20th and February 23rd and by all accounts, the employee was on a drinking binge during this four day period. The employee was suspended without pay for four days on February 24th for "out of control behaviour related to alcohol consumption". It was not until some time after this that management of the LHO was made aware of the breach of privacy. No further

disciplinary steps were taken against the employee when the breach was discovered because the posts had been removed and the manager “found it difficult to take disciplinary action against the employee in question as there was no concrete proof that confidential arrears information had been shared”.

THE OUTCOME

At the time of the discovery of the breach, the Manager of the LHO did not feel that he could discipline the employee because of a lack of physical evidence to show that personal information had been improperly used and disclosed by the employee. He did, however, initiate a discussion with administration staff about protecting the privacy of public housing tenants and it was made clear that if any private information was shared publicly, or through gossip, it would result in strict disciplinary action.

All LHO's are established under the Nunavut Housing Corporation Act and the Nunavut Housing Corporation provides oversight and guidance to the LHOs. When the Housing Corporation was advised about the breach, the matter was discussed at a regular Senior Management Committee (SMC) meeting, and the importance of ensuring the privacy of personal information was emphasized. As a result of that meeting, the SMC agreed that the most effective course of action would be to introduce a confidentiality agreement similar to the one which is required for all other Government of Nunavut employees, to be signed by all new employees upon hire. An Oath of Office and Secrecy document has been drafted and is being finalized and will be sent to all 25 of the LHOs and all employees will be required to read and sign it. The SMC also decided that, in addition to having all employees of LHOs sign the confidentiality agreement, Community Development Officers would visit each LHO to explain the importance of confidentiality and the LHO's responsibilities under the *Access to Information and Protection of Privacy Act*.

DISCUSSION

I have to admit to having been very surprised and concerned to discover that LHO employees have not, in the past, been asked to sign any kind of confidentiality agreement, particularly in light of the fact that LHOs collect and retain a large amount of personal information about people in the communities. While it appears that this particular deficit is now in the process of being corrected, it leaves me to wonder whether LHOs have any written policies or procedures in place with respect to privacy and/or access matters at all. Are there other significant deficiencies in the way in which LHOs collect, use and disclose personal information? Are there appropriate security arrangements in place to protect the personal information collected by LHOs or in fact any policies or procedures in place with respect to the security of such records? Are these policies compliant with the *Access to Information and Protection of Privacy Act*? Are the employees of LHOs given any training or guidance at all with respect to their responsibilities under the Act? Are there specific policies in place with respect to disciplinary responses to breaches of privacy? In light of the absence of something as basic as a confidentiality agreement, I have to assume there is very little in the way of clear written policies with respect to these issues within the LHOs.

I also note that new provisions to the *Access to Information and Protection of Privacy Act* require a public body that knows or has reason to believe that a breach of privacy has occurred with respect to personal information under its control must report the breach of privacy to the Information and Privacy Commissioner if the breach is material. Whether or not the breach is “material” requires the public body to assess, among other things, the sensitivity of the information in question, the number of individuals whose information is involved, the likelihood of harm to the individuals whose personal information is involved and an assessment by the public body as to whether or not the cause of the breach is a systemic issue. Neither the Nunavut Housing Corporation or the LHO advised my office about this breach. It came to me as a result of a complaint from the individual whose information was breached. In my opinion, this breach was “material”, notwithstanding the fact that it involved only one person’s information. The

information disclosed was sensitive financial information and, in the small community the Complainant lived in, the disclosure caused him significant embarrassment, if not any actual harm. Furthermore, the cause of the breach clearly resulted from a systemic problem - that is a significant lack of knowledge and understanding on the part of employees as to their responsibilities under the ATIPP Act. This matter should have been reported to the Information and Privacy Commissioner by either the LHO or the Nunavut Housing Corporation. The Housing Corporation, however, had not been informed about the breach by the LHO and the LHO failed to report it to my office.

Finally, I feel that it is necessary to comment on the lack of discipline for the employee who breached the Complainant's personal information. This was not a mistake or an accident. The breach was calculated and deliberate and was done as a result of some kind of personal disagreement between the employee and the Complainant. The employee admitted to the breach after the fact. In these circumstances, I cannot understand the manager's reluctance to mete out appropriate discipline.

Mistakes and accidental disclosures will happen no matter how carefully these things are managed. But when an employee deliberately takes information he has learned about someone only as a result of his employment with the public body, it is a completely different matter. Such a breach demands strong and definitive discipline, if for no other reason than to discourage such behaviour in others. This kind of behaviour should result in severe discipline, to and including dismissal.

CONCLUSIONS AND RECOMMENDATIONS:

My recommendations in this matter are as follows:

1. My first recommendation I have made before. I strongly recommend that the Legislative Assembly take steps to amend the regulations under the *Access to Information and Protection of Privacy Act* to clearly designate Local Housing Associations and Local Housing Authorities created under the *Nunavut Housing*

Corporation Act as “public bodies” under the ATIPP Act. This is the third time within the last year that issues have arisen, either with respect to access to public records held by a LHO or with respect to breaches of privacy by employees of a LHO. While I have given my opinion that LHOs are, by virtue of their connection to the Nunavut Housing Corporation, responsible for compliance with ATIPP, to dispel any question on this issue, they should be explicitly included. If nothing else, such inclusion would require LHOs to be more diligent and knowledgeable with respect to these matters.

2. Secondly, I recommend that steps be taken by the Nunavut Housing Corporation, in consultation with the LHOs to develop a set of comprehensive privacy policies for all LHOs for immediate implementation. These policies should include provisions with respect to the basic privacy issues related to the collection, use and disclosure of personal information, as well as what security measures should be in place. They should also address such things as breach notification and discipline for failing to comply with the policies.
3. In addition, I recommend that every LHO be provided with some basic information/training about the ATIPP Act and the organization’s responsibilities under the Act. As a minimum, such training should be a requirement of senior managers of LHOs.

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner