

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 14-078

August 5, 2014

Review File: 13-183-5

BACKGROUND

This matter was brought to my attention by a member of the general public who had heard a news report on CBC North late last year in which the personal information of an individual was disclosed by the interviewee. An employee of the Government of Nunavut, Department of Community and Government Services was being interviewed about the Hamlet of Pangnirtung going over budget. During the interview, the employee explained that part of the difficulty was that a key employee of the municipality, who he named, had had some health issues and was, therefore, away from the community. The Complainant who brought the matter to my attention was quite upset and wondered whether this was an indication of the manner in which the GN dealt with personal information generally. I was able to listen to a recording of the interview to confirm the Complainant's statements about what had been said.

THE DEPARTMENT'S EXPLANATION

In its response to the complaint, the public body advised that they had reviewed the interview in question and in their view it did "not rise to the level of a material breach of privacy". It was their position that "the information disclosed was available to the public" and they quoted Section 48(t) of the Act as their justification for the disclosure. The public body also referred to section 49.9(2), which deals with breach notification and provides guidance with respect to when a breach is deemed to be "material" such as to require that it be reported to the Information and Privacy Commissioner. The public body went into some detail with respect to why this was not a "material" breach of privacy in the circumstances.

DISCUSSION

The facts of this case raise two issues for me. The first is whether or not there was a breach of privacy of the individual in question when the GN employee announced, on public radio heard in every community in Nunavut, that a named individual was away from work for health related reasons. The second issue is whether a breach of privacy has to rise to the level of being a “material” breach before it is contrary to the terms of the *Access to Information and Protection of Privacy Act*.

Section 2 of the Act defines “personal information”, in part, as follows:

"personal information" means information about an identifiable individual, including ...

- (f) information about the individual's health and health care history, including information about a physical or mental disability,
- (g) information about the individual's educational, financial, criminal or employment history ...

Section 43 outlines the purposes for which a public body can use personal information about individuals, including employees.

- 43. A public body may use personal information only
 - (a) for the purpose for which the information was collected or compiled, or for a use consistent with that purpose;
 - (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use; or
 - (c) for a purpose for which the information may be disclosed to that public body under Division C of this Part.

Sections 47 and 48 of the Act set out when and how a public body can disclose personal information. The relevant portions of those sections are as follows:

47. A public body may disclose personal information only
 - (a) in accordance with Part 1; or
 - (b) in accordance with this Division.

48. A public body may disclose personal information
 - (a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;
 - (b) where the individual the information relates to has identified the information and consented, in the prescribed manner, to its disclosure;
 - (t) where the information is otherwise available to the public;

These sections set out the rules for when a public body can use and/or disclose information gathered by them. In this case, the Department had knowledge of an individual's employment and medical status as a result of their role overseeing community governments. That information was gathered for the purpose of assisting the community to deal with some financial/book keeping problems. There is no evidence that the individual consented to this information being disclosed for any other purpose.

The public body relies on the fact that the information was otherwise available to the public. In support of this, they say that the fact that this individual was on medical leave "was well known and a matter of public knowledge having previously been disclosed in a November 17th article in the Nunatsiaq news and on the Hamlet's website".

While the public body in this case may be able to rely on Section 48(g) such that the disclosure of the individual's personal information is not a breach of privacy under the *Access to Information and Protection of Privacy Act*, the disclosure was still an unnecessary disclosure of the individual's personal health information and a breach of privacy.

Basic respect for individual privacy should have intervened. Medical information, detailed or not, can be very sensitive. Was there really a need to name the individual in the interview and to confirm that he/she was on medical leave? I think the matter could have been addressed without reference to those facts. Was the information already “out there”? It appears to have been, but does that justify the further disclosure by the public body? One of the issues here is that the information was available because of an initial breach of the individual’s privacy by the community, who posted that information on it’s website. Should this breach of privacy by the community justify the public body’s further breach of privacy by repeating that information in a CBC interview? The fact that this kind of information was posted on the community’s web site points to the need for Nunavut municipalities to have access and privacy legislation or, at least, policies and guidelines. This type of information should never been posted on a community web site.

The public body in this case also argued that unless a breach is “material” as defined in section 49.9(2) of the Act, there is no unlawful breach. This is not what the Act says. As noted above, sections 47 and 48 define when personal information can be used or disclosed. If the disclosure does not fall within one of those allowable purposes for disclosure of personal information, it is a breach of privacy under the Act. Section 49.9 requires that a public body who “knows or has reason to believe that a breach of privacy has occurred with respect to personal information under its control shall report the breach of privacy to the Information and Privacy Commissioner in accordance with this section if the breach is material”. The rest of the section goes on to describe when a breach is to be considered a “material” breach. In other words, section 49.9 provides that public bodies must report material breaches of privacy to my office. It does not say that there is no breach of privacy under the Act unless the breach is a “material” one.

CONCLUSIONS AND RECOMMENDATIONS

Because the information in question was already within public knowledge when the CBC interview took place, there was in this case no breach of privacy **under the Act**. This said, the disclosure of the information in question was not necessary and did

amount to a breach of the individual's personal privacy. These kinds of statements should be avoided. A breach of privacy is a breach of privacy, whether or not the disclosure is allowed by the Act. Whenever possible, breaches of privacy should be avoided.

If there is a recommendation to be made in this case, it is, once again, that municipalities be included as public bodies under the *Access to Information and Protection of Privacy Act* at least to the extent of imposing responsibilities on them with respect to the collection, use and disclosure of personal information. I realize that this is not a recommendation that the CGS can implement on its own. It is a recommendation that I have been making in my annual reports to the Legislative Assembly for years. I understand that some progress is being made but until such time as that happens, I do recommend that the Department of Community and Government Services create and provide all municipalities in Nunavut with a draft privacy policy for their consideration and encourage them all to implement reasonable privacy safeguards when dealing with personal information.

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner