

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 15-094

September 25, 2015

Review File: 15-139-5

BACKGROUND

The Complainant wrote to my office asking that I review a breach of his privacy while employed as a teacher in a Nunavut school. According to the Complainant, several days before being told by his principal that his contract was not going to be renewed, he was “literally flagged down in the hall by a fellow teacher” who “rushed out of his classroom to inform me that I was not returning”. He alleges that the other teacher’s wife, who was a volunteer with another school, had been involved in a discussion about staffing matters, and had been told that the Complainant’s contract was not going to be renewed and she, in turn, passed this information on to her husband. The decision with respect to the Complainant’s continued employment had, apparently, been made at an *in camera* meeting some time prior to the wife’s conversation in which the issue came up.

The Complainant indicated that he asked his direct supervisor to address the issue, but he declined to do so. The Complainant then took the matter up the ladder, and was advised that the matter would be investigated. He says that when a month had passed and no response had been received, he wrote a letter to the District Education Authority, which did not receive a response.

THE PUBLIC BODY’S EXPLANATION

I asked the Department of Education to address the issue raised by the Complainant, and asked that they provide responses to several specific questions.

The Department indicates that it spoke to the other teacher and his wife who both denied the facts alleged by the Complainant. They both told Department officials that they were completely unaware of the Complainant's employment status prior to the Complainant being advised of it, and that it was not until the Complainant himself informed them that his contract was not being renewed that they did become aware of that fact.

There was, apparently, no attempt to discover who had been involved in the *in camera* meeting in which the issue of the Complainant's employment was discussed or to inquire if any of those people might have inadvertently (or otherwise) disclosed the information.

In response to specific questions from me about the way in which education is administered in Nunavut, the Department indicated that District Education Authorities are established in each community. These are locally-elected bodies are made up of community members who are interested in education.

The DEA's work with the Department of Education staff to serve many of the functions of a school board, and are responsible for administration of schools in Nunavut...[I]t is the responsibility of the individual DEA to create their own by-laws, policies and procedures for both members and their employees.

The Department argues that DEAs are not listed in Schedule A to the *Access to Information and Protection of Privacy Act* and are not, therefore, subject to the act.

DEAs are charged with the responsibility of creating their own policies and procedures, and make decisions with respect to hiring and firing of personnel. All employees are, however, employees of the Government of Nunavut (GN). The GN provides all employees with access to policies and procedures in place regarding, among other things, privacy concerns. Chapter 2 of the Public Service Code of Values and Ethics specifically deals with issues of privacy. The Department says that they have a process

in place which allows for employees to make a complaint about a breach of their privacy.

In this case, the Department of Education acknowledges that the Complainant's concerns were received by the local school district officials in early April, but that the complaint was not immediately investigated because the executive director was away on extended travel duty. By the time this person returned to his office, the Complainant had taken his case to the Ethics Officer for the Nunavut Public Service and had written a letter to the Minister about the matter. The Ethics Office apparently concluded that there was no wrongdoing. I was not provided with any report from the Ethics Office, therefore, have no idea what they considered or why they came to their conclusion that there had been no unauthorized disclosure of personal information. Because the matter had been dealt with by the Ethics Office, the DEA determined that they did not need to investigate further or take any additional steps.

The Department concludes that they could not find "any substantial evidence that would indicate a breach of privacy has occurred."

DISCUSSION

It is concerning that the Department of Education could not (or would not) provide me with copies of policies and procedures in place at the District Education Authority involved in this case with respect to expectations surrounding privacy. I do not necessarily agree with the argument made by the Department that DEAs are not subject to the *Access to Information and Protection of Privacy Act*. While they are not listed in Schedule A, it is very arguable that their mandate and financial health are so closely connected to the Department of Education that they are, in fact, under the substantive control of the Department and, therefore, subject to the Act. This issue, however, will remain unresolved for now, as I don't think that matter has to be determined to address the Complainant's concerns.

Whether or not the DEA is subject to the Act, teachers in Nunavut, including both the Complainant and the other teachers involved, are GN employees and therefore responsible to uphold all GN legislation, including the *Access to Information and Protection of Privacy Act*.

I am not at all surprised that both the other teacher and his wife denied breaching the Complainant's privacy as there is an element of self preservation involved. No matter how innocent or inadvertent the disclosure might have been, it is unlikely that they would have admitted to it when challenged as a result of a complaint. We are, therefore, left with a case of "he said/she said" and it is impossible to determine which one is actually true. That doesn't mean that the incident didn't happen. Nor does it mean it did happen.

Assuming, however, for the purposes of discussion, that the Complainant's allegations are completely true, there is absolutely nothing that can be done to "undo" the breach. There are, however, things that we can learn from this. The first lesson is that District Education Authorities need to have specific and clear policies with respect to privacy issues and those policies must be enforced and reinforced. People like to talk about things and gossip is a fact of life. It is easy to see how someone in the *in camera* meeting in which the Complainant's employment status was discussed might have inadvertently let it slip, in another discussion about staffing needs, that a decision had just been made to let someone go. In fact, I'm sure it happens all the time - and probably more frequently in small communities where everyone knows everyone else.

It is disappointing, as well, that the Complainant's concerns were not addressed in the first instance and only belatedly when he escalated his concerns up the ladder.

The only way to prevent, or reduce, the incidence of these kinds of disclosures, and to give a complaint of a breach of privacy the importance necessary to require a reaction is to create visible and clear rules surrounding the collection, use and disclosure of personal information (not only of employee's information, but also student's personal

information) and which contain clear procedures when a breach is reported. Once in place, these policies must be repeated and reinforced continuously so as to bring home the message and remind people of their obligations.

CONCLUSIONS AND RECOMMENDATIONS

As noted above, there is no way to confirm whether or not things transpired in accordance with the Complainant's statement. It is entirely conceivable that they did and given that the Complainant was persistent in making his concerns known (reporting to his superior, reporting to the DEA, reporting to the Public Service Ethics Office, writing a letter to the Minister and filing a complaint with my office) you have to think that there is something to the complaint. There is, however, no way to come to any concrete conclusions about what actually happened. Even if we could, a breach of privacy, once committed, cannot be taken back. All we can do is learn from the incident and make improvements so that it is less likely to happen again.

To this end I recommend:

- a) That the Department of Education require that all District Education Authorities have strong policies surrounding the privacy of personal information in keeping with the provisions of the *Access to Information and Protection of Privacy Act* and that they assist the DEA's in establishing those policies, which should include procedures through which complaints about a breach privacy should be addressed;
- b) That the Department of Education assist the DEAs in training their employees and volunteers about their obligations to protect the privacy of employees and students;

- c) That DEAs provide ongoing messaging and training to all volunteers and employees emphasizing the need for care when dealing with the personal information of third parties.

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Nunavut Information and Privacy Commissioner