

Issues

- [4] The issues in this review are:
- a. Was the information exchanged between the Departments of Health and Family Services “personal information”?
 - b. Did the Complainant consent to the disclosures?
 - c. Was the disclosure by Health to DFS authorized under section 48 of the *Access to Information and Protection of Privacy Act*?
 - d. Was the disclosure by DFS to Health authorized under section 71(2) of the *Child and Family Services Act*?

Facts

- [5] The Complainant is a Nunavut resident who was, for an extended period, receiving specialized health care outside the territory. In order to protect the Complainant’s identity, I will say nothing further about the nature of the care, where it was received, or when.
- [6] At a certain point, the Complainant was ready to return to Nunavut. It was the responsibility of Health to bring the Complainant back to the territory. There followed a lengthy back-and-forth between the Department of Health and the Complainant concerning travel arrangements.
- [7] The Complainant did not have a home to which they could return. The Complainant proposed going to a certain residence in a Nunavut community and asked that travel arrangements be made to get the Complainant to that community.
- [8] At that point, but without the Complainant’s knowledge, the Health manager who was handling the file contacted the Department of Family Services. The Health manager was familiar with the Complainant’s history, and thought that DFS might have concerns about the Complainant’s proposed destination. The concern expressed was for the Complainant’s health or safety. There was, in the view of the Health manager, a risk of domestic violence.

- [9]** A DFS manager replied to confirm that DFS had concerns with the proposed living arrangement. DFS said their concerns were not only for the Complainant's own health and safety, but also for the health and safety of a child in the household. DFS believed the Complainant's presence in the household would put the child at risk of harm.
- [10]** As a result of this exchange with DFS, the Health manager informed the Complainant that the proposed destination would not be approved. The Complainant was taken aback. They had thought that Health's role was only to book travel back to Nunavut, not to approve the destination.
- [11]** In the end, alternative travel arrangements were made. The Complainant returned to Nunavut, but not to the destination originally proposed.
- [12]** The Complainant had no direct evidence of conversations between Health and DFS, but deduced that it must have happened. On that basis, the Complainant contacted this office to request a privacy breach review.
- [13]** As part of the review, the Department of Health produced to this office all of the relevant emails passing between Health and DFS, and between Health and the Complainant.
- [14]** The emails show that there were indeed background conversations between Health and DFS about the Complainant, and that Health's rejection of the originally proposed destination was based on those conversations.
- [15]** The facts of the case are considerably more complex than presented here, but the above summary of the facts is sufficient for purposes of this review.

Law

[16] The present complaint is an allegation of unauthorized disclosure of personal information. The allegation is that Health disclosed personal information to DFS, and that DFS disclosed personal information to Health, and that both disclosures were unauthorized.

[17] Section 48 of the ATIPPA is a list of circumstances in which disclosure of personal information is authorized. The possibly relevant clauses are as follows:

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;

...

(k) to an officer or employee of the public body or to a member of the Executive Council, where the information is necessary for the performance of the duties of the officer or employee or the member of the Executive Council;

(p) for the purpose of complying with a law of Nunavut or Canada or with a treaty, written agreement or arrangement made under a law of Nunavut or Canada;

(q) when necessary to protect the mental or physical health or safety of any individual;

(u) for any purpose in accordance with any Act that authorizes or requires the disclosure;

...

[18] Section 48(a) refers to “a use consistent with” the original purpose. Section 48.1 provides guidance on what that phrase means:

48.1. A use of personal information is consistent under section 43 or 48 with the purpose for which the information was collected or compiled where the use

- (a) has a reasonable and direct connection to that purpose; and
- (b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

[19] The *Child and Family Services Act* also has relevant provisions, given that DFS was concerned about the safety of a child in the destination household. There is a general “duty to report” in section 8:

8. (1) A person who has information or reasonable grounds to believe that a child needs protection shall, without delay, report the matter

- (a) to a Child Protection Worker; or
- (b) if a Child Protection Worker is not available, to a peace officer or an authorized person.

...

(2) Subsection (1) applies notwithstanding that the information reported is confidential or privileged.

[20] Sections 70 to 74 of the CFSA deal with confidentiality and disclosure. Any information relating to a child or the child’s parent is confidential: section 71(1). Section 71(2) lists the circumstances in which information can be disclosed. The most relevant clauses are as follows:

(2) Notwithstanding the provisions in the *Access to Information and Protection of Privacy Act* allowing disclosure of personal information as defined in that Act, no person referred to in subsection (1) shall disclose or communicate any information or record of information described in subsection (1) to any person except

- (a) where necessary or appropriate in the exercise of his or her powers or in the performance of his or her duties under this Act or the regulations;
- (b) with the written consent of the person to whom the information or record relates;

...

- (h) where a disclosure or communication is required for the purposes of this Act or to protect a child;

...

- (k) where it is required for the purposes of this Act.

[21] This wording means that section 71(2) of the *Child and Family Services Act* overrides section 48 of the ATIPPA. The two sections have a lot in common, and in many cases will lead to the same result; but the Legislative Assembly has given priority to section 71(2).

Analysis

[22] The Department of Health disclosed information about the Complainant to the Department of Family Services, and Family Services disclosed information about the Complainant to Health. The issue in this case is whether those disclosures were authorized by law. For the reasons that follow, I have concluded they were. There was therefore no breach of the Complainant's privacy.

Was the information "personal information"?

[23] Health disclosed to DFS the Complainant's travel plans, including the community to which they intended to travel, and the residence where they intended to live. This was information about an identifiable individual. It is "personal information" within the meaning of the ATIPPA.

[24] DFS disclosed to Health its detailed concerns about what might happen if the Complainant lived at the proposed destination. This was also information about an identifiable individual. It is "personal information" within the meaning of the ATIPPA.

Did the Complainant consent to disclosure?

[25] The Complainant's principal argument is that they did not consent to the disclosures between Health and DFS.

[26] In the course of the communications between Health and Family Services, Family Services circulated a consent-to-disclosure form signed by the Complainant. This consent form, wrote the Family Services employee, "will allow our agency to get consent to [the Complainant's] information from other agencies."

- [27]** Despite the consent form, the Department of Health's submissions on this review are that the consent form was signed for a different purpose. They do not rely on it. I therefore give no weight to it.
- [28]** In any event, I would have found that the Complainant did not give informed consent. The consent form does cover the period in question, and was signed by the Complainant. But the form itself, which is pre-printed with blanks to be filled in, is badly written. When the blanks are completed, it does not form a grammatical sentence. I therefore could not understand what the Complainant was supposed to have consented to, or whether the wording covered the situation at hand.
- [29]** Moreover, the consent-to-disclosure form is in English only, and I am advised by Health that the Complainant's first language is not English. I did not delve into the circumstances under which the form was signed, since ultimately the consent form was not relied on by Health. I would point out, however, that consent forms should be available to Nunavummiut in the official language of their choice. If they are not, there is a risk they will be found to be invalid.
- [30]** As stated in section 48(b) of the ATIPPA and section 71(2)(b) of the CFSA, personal information may be disclosed with consent. In this case, the Complainant did not give consent.
- [31]** Although the Complainant relied mainly on the lack of consent, that is not the end of the analysis. As noted in the Law section above, there are other statutory reasons why a disclosure might be authorized. I turn now to consider whether any of them apply to this case.

Was Health's disclosure authorized?

- [32] Health obtained the Complainant's travel plans from the Complainant. This was normal business for Health, which arranges for a high volume of medical travel for Nunavummiut. But Health then disclosed that information to Family Services. That was not normal business.
- [33] From reading the email record, and also from other information provided by Health, I find the Health manager was thoroughly familiar with the Complainant's situation. They were not part of the Medical Travel division, responsible only for booking travel. This manager was involved with the Complainant's substantive care over the long term. They knew that the Complainant had been involved with DFS. The Complainant's health situation was complex, and included family and social elements, and it was only to be expected that the Health file would include elements coming from or relevant to DFS.
- [34] I find that the Health manager had reasonable grounds to believe that DFS would be concerned about the Complainant's proposed destination. Moreover, the manager had reasonable grounds to then disclose the proposed destination to DFS.
- [35] The privacy provisions of the ATIPPA are not intended to force public bodies into silos. Section 48 lists the circumstances in which communication outside the public body is permitted. The list is long. The most relevant ones are quoted in the Law section above. In this case, the Health manager knew enough to know that DFS might have a concern. That turned out to be justified; DFS did have a concern.
- [36] The Department of Health submits on this review that the manager's disclosure is covered by the "duty to report" in the CFSA. I do not think that is correct. It was not the Health manager who first raised concerns about the child; that came from DFS.
- [37] Nevertheless, in my view, Health's disclosure of personal information to DFS was authorized under clauses 48(k), (q) and (u) of the ATIPPA. Both

Health and DFS had an interest in the Complainant's health and safety. The Health manager was justified in comparing notes, as it were, with DFS. They were doing their job. To find otherwise would be to force the two departments into silos, which is precisely the opposite result that anyone would want where there is a risk of domestic violence.

Was Family Services' disclosure authorized?

- [38]** The analysis is different for DFS's disclosure to Health. If DFS had authority to disclose, it must be found in section 71(2) of the CFSA, not section 48 of the ATIPPA. As stated in the Law section above, that is because section 71(2) overrides section 48, and is narrower.
- [39]** DFS did not limit itself to expressing a concern about the Complainant's proposed destination. It disclosed to Health the specific reason for that concern. DFS also contacted the householder of the proposed residence to make inquiries, and advised the householder that the child might be apprehended if the Complainant came to live there.
- [40]** After Health was informed of DFS's concerns, the Health manager advised the Complainant that the proposed destination would not be approved.
- [41]** It is not within my authority to determine if DFS's concern for the child was justified. For purposes of this review, I will assume that it was. The question before me is whether DFS breached the Complainant's privacy by sharing its concern with Health.
- [42]** In the circumstances, I cannot find fault with what DFS did. They did not want the Complainant and the child in the same household. They did not have the authority to order Health to make an alternative travel arrangement. Therefore they could only try to persuade Health or the householder not to do it. If Health went ahead with the proposed arrangement, DFS would probably have set in motion the apprehension of the child.

- [43] It might be argued that DFS could have achieved its objective without disclosing the Complainant’s personal information to the Health manager, or by disclosing less than they did. Even when disclosure of personal information is authorized, it is a good practice to disclose as little as possible. But as I wrote in slightly different circumstances, “We should not be too quick to pick apart, at leisure and with hindsight, a decision made in an instant”: *Department of Health (Re)*, 2021 NUIPC 5 (CanLII) at paragraph 28.
- [44] In my view, DFS’s disclosure of personal information to Health was authorized under clauses 71(2)(a), (h) and (k) of the CFSA. DFS had an interest in the health and safety of both the Complainant and the child. The DFS manager was justified in disclosing to Health the reason for their concern. They were doing their job. Again, to find otherwise would be to force the two departments into silos, which is precisely the opposite result that anyone would want where there is a risk of child abuse.

Conclusion

- [45] The information exchanged between the Department of Health and the Department of Family Services was the Complainant’s “personal information”.
- [46] The Complainant did not consent to the disclosures.
- [47] The disclosure of personal information by Health to DFS was authorized under clauses 48(k), (q) and (u) of the *Access to Information and Protection of Privacy Act*. There was therefore no breach of the Complainant’s privacy by Health.
- [48] The disclosure of personal information by DFS to Health was authorized under section 71(2)(a), (h) and (k) of the *Child and Family Services Act*. There was therefore no breach of the Complainant’s privacy by DFS.

Recommendations

- [49] In view of my conclusions, I make no recommendations with respect to the disclosure of personal information in this case.
- [50] Although the consent form signed by the Complainant turned out to be a peripheral issue, I do have recommendations flowing from my analysis of the form (see paragraphs 25 to 30).
- [51] **I recommend** the Department of Health and the Department of Family Services review their consent-to-disclosure forms, and where appropriate, revise them so that they are clearer and make grammatical sense (see paragraph 28).
- [52] **I recommend** the Department of Health and Department of Family Services review whether their consent-to-disclosure forms are available in all of Nunavut's official languages, and whether Nunavummiut are being offered the form in the language of their choice (see paragraph 29).

Graham Steele

ᑲᑦᑦᑦ / Commissioner / Kamisina / Commissaire