



## **Issues**

- [4]** The issues in this review are:
- a. Did Finance make reasonable security arrangements with respect to personal information in its vendor payment system?
  - b. In the circumstances of this case, did Finance breach the Complainant's privacy?

## **Facts**

**[5]** In 2009, while resident in Nunavut, the Complainant registered for a training course to be delivered in Toronto. They were eligible for reimbursement by the Government of Nunavut for certain course-related expenses.

**[6]** For purposes of reimbursement, the Complainant gave an address in Toronto where they would be staying during the course. The home belonged to a relative of the Complainant. For the Complainant, this was a temporary address.

**[7]** After several delays stretching from 2009 into 2010, the course was cancelled. The Complainant filed a claim for reimbursement of expenses they had incurred. The Complainant was not reimbursed. Eventually, the Complainant gave up on the expense claim. The Complainant moved away from Nunavut.

**[8]** In 2020, a cheque from the Government of Nunavut, made out to the Complainant, arrived at the Toronto address that had been given by the Complainant back in 2009. The home was still occupied by the Complainant's relative. The cheque eventually made its way to the Complainant.

**[9]** There was no explanation what the cheque was for. The amount of the cheque, a little under one thousand dollars, was in the range of what the Complainant believed they were owed for the training-course expenses. The Complainant had given the Toronto address solely for purpose of reimbursement of those expenses. The Complainant concluded the cheque must have been on account of those expenses. The Complainant deposited the cheque.

**[10]** In mid-August 2021, the Complainant learned that the GN was seeking reimbursement for the cheque. It appears that Finance had sent demand letters to the same Toronto address, but the Complainant did not immediately become aware of them.

**[11]** There was eventually direct communication between Finance and the Complainant. Finance's position was that the cheque had been sent to the Complainant in error. Finance therefore demanded repayment. The Complainant refused repayment, on the grounds that Finance's claim was offset by the Complainant's training-course expense claim. Finance refused to consider the offset and insisted that the full amount of the mistaken cheque be repaid.

**[12]** The Complainant says that, during a phone call with a Finance employee, the Complainant gave their current contact information and stated that the Toronto address was not the right address. Nevertheless, mail related to the debt dispute continued to be sent to the Toronto address.

**[13]** Because the Complainant was refusing repayment, Finance sent the file to a collection agency. It appears that the collection agency was given the Toronto address from 2009, because the collection agency sent letters and made calls to that address. This was stressful for the Complainant's relative who lived there.

**[14]** An entry was also made, either by Finance or by the collection agency, with one or more credit rating agencies, noting that the Complainant had an unpaid debt. The Complainant states that this entry negatively impacted some specific applications for credit, causing stress and financial hardship for the Complainant.

**[15]** Eventually, the Complainant repaid the amount claimed by the GN.

**[16]** On April 15, 2022, the Complainant filed a privacy breach complaint with this office. I requested further information, which the Complainant supplied. On April 20, 2022, I wrote to the deputy minister of Finance, advising him of the complaint and asking for more information.

**[17]** On May 10, 2022, the deputy minister replied. In response to the question of why the erroneous payment was made, the deputy minister acknowledged “an accumulation of factors”:

- a. Finance intended to make payment to an individual whose nine-character “vendor code” was one character different from the Complainant’s vendor code. The code was entered incorrectly.
- b. “Multiple reviews” should have caught the coding error, but did not.
- c. When Finance moved to new databases in 2018-19, the Complainant’s data should have been “purged”. It was not. The deputy minister attributes this oversight to “vacancy and capacity issues at the manager level within the Financial Controls Division”.

**[18]** The deputy minister’s letter stated, “The Department has reached out to the Collection Agency to have this file removed from the complainant’s record”.

**[19]** I sent to the Complainant a copy of the deputy minister’s letter. On May 27, 2022, I received a reply submission from the Complainant.

## **Law**

**[20]** Part 2 of the ATIPPA deals with protection of privacy. The protection of privacy has three components:

- a. A public body can collect personal information only if authorized by law (sections 40-41).
- b. A public body can use personal information only for the purposes authorized by law (sections 43 and 44).
- c. A public body can disclose personal information only in the circumstances authorized by law (sections 47-49).

**[21]** There is also, in section 42, a general duty to make reasonable security arrangements:

42. The head of a public body shall protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

**[22]** Section 45 of the ATIPPA gives citizens a right to correction of personal information held by a public body:

45. (1) An individual who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

### **Analysis**

**[23]** The Complainant believes they have been abused by Finance's maladministration. They say that Finance has violated the territorial *Financial Administration Act*, the GN Financial Administration Manual, and the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), in addition to the ATIPPA.

**[24]** Unfortunately, most of the case – the original debt, the validity of the claimed offset, the referral to the collection agency, the notation on the Complainant's credit file, and generally the way that Finance handled the file – are outside my statutory jurisdiction.

**[25]** On the debt and offset issue, the Complainant may have had a remedy in the Small Claims Court of Ontario or Nunavut. On the collection agencies issue, the Complainant may have had a remedy under the Ontario law governing collection agencies. On the credit rating issue, the Complainant may have had a remedy under the Ontario consumer protection law.

**[26]** I am not suggesting that these other processes would have been easy or convenient for the Complainant, especially for the relatively small debt claimed by the GN. I mention these other dispute-resolution processes only to underline that my statutory authority, derived solely from the Nunavut ATIPPA, covers only a fraction of the case. No matter what I decide, the Complainant will be left with the core of their complaint unaddressed.

**[27]** This would be a perfect case for an Ombudsman, but there is no Ombudsman in Nunavut. An Ombudsman’s role is to investigate cases of government maladministration. I note in passing that some Canadian jurisdictions, including Yukon and Manitoba, combine the roles of Ombudsman and Information and Privacy Commissioner.

*Was there a breach of privacy at all?*

**[28]** The Complainant filed a privacy breach complaint, and referred to “the data breach”. But I could not make out what exactly “the data breach” was supposed to be. At first, it was not clear to me that the case can or should be analyzed as a privacy breach.

**[29]** Certainly there was a mistake in issuing the cheque – Finance admits as much – but a mistake is not in itself a breach of privacy. In some narrow sense, every mistake is an “unauthorized use” of personal information, but it is not reasonable, in my view, to interpret the privacy provisions of the ATIPPA as covering every file-processing error by a public body. Usually a mistake can and should be corrected through the public body’s dispute-resolution processes. The ATIPPA is not intended to be, and cannot become, a portal through which any government mistake can be reviewed.

**[30]** The way Finance went about attempting to recover the mistaken payment – the demand letters, the referral to a collection agency, the notation on the credit file – were routine business for the GN. All were authorized under section 48(a), (c) and (d)(i) of the ATIPPA. The Complainant acknowledges that referral of a debt to a collection agency is an authorized purpose. On this point there is a recent decision from my counterpart in Saskatchewan, applying similar statutory wording: *Saskatchewan (Justice and Attorney General) (Re)*, 2022 CanLII 37557 (SK IPC).

**[31]** On reflection, however, I believe that the case can indeed be analyzed as a privacy breach, under section 42.

## Section 42

**[32]** As noted in the Law section above, section 42 imposes a general duty on a public body to make reasonable security arrangements:

42. The head of a public body shall protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

**[33]** In all previous cases I could find, section 42 came into play when personal information was lost or stolen or was otherwise insecure: see, for example, *Department of Health (Re)*, 2020 NUIPC 14 (CanLII); *Department of Health (Re)*, 2020 NUIPC 5 (CanLII); *Department of Health (Re)*, 2020 NUIPC 19 (CanLII); *Nunavut Legal Services Board (Re)*, 2020 NUIPC 2 (CanLII); *Review Report 19-154 (Re)*, 2019 NUIPC 7 (CanLII).

**[34]** But that is not what happened in this case. The Complainant's temporary Toronto address was not lost or stolen. Someone in Finance simply mistyped a vendor code, and nobody caught the error.

**[35]** Is section 42 broad enough to cover the facts of this case? I can find no Nunavut precedent for section 42 being used in this way. I am left, then, with a careful reading of the statutory language, in keeping with the rule of statutory interpretation set in the Legislation Act:

16. (1) The words of an Act and regulations authorized under an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.

**[36]** The phrase "such risks as" in section 42 implies that the list of risks is open-ended. In other words: the list of risks is not limited to access, collection, use, disclosure, or disposal. In my view, unnecessary retention creates risks similar to the risks created by unauthorized access, collection, use, disclosure, or disposal.

**[37]** I conclude, then, that the timely disposal of personal information is part of “reasonable security arrangements”. When personal information is properly disposed of, it is no longer available to be lost or stolen – or, as in this case, used by mistake.

**[38]** There may be some question about exactly when personal information is old enough to be deleted or archived. Section 44(b) of the ATIPPA suggests a public body must keep personal information used in decision-making for at least one year. I am prepared to accept that Finance could hold on to the information for a reasonable period after closure of the expense file. There may be operational, audit, or other accountability requirements to retain the information for a reasonable period. Finance also needs to comply with the *Archives Act* and any applicable GN records retention policy.

**[39]** But in this case, Finance kept the Complainant’s personal information on file long after it had served its purpose. Finance properly collected the Complainant’s personal information in 2009. They needed it to pay an anticipated expense claim. As it turned out, the Complainant’s expense claim was never paid. We do not know why. Regardless, the purpose for which the Complainant had given their personal information to the GN was completed in 2010.

**[40]** Whatever a “reasonable” period might be for holding on to the Complainant’s personal information, Finance far exceeded it in this case. The Toronto address thereafter sat in Finance’s payment system, like a ticking time bomb. It took ten years to go off. It may have gone off by accident, but the resulting chain of events caused stress and financial harm to the Complainant.

**[41]** The key finding in this case is that, after ten years, there was no good reason for that Toronto address to still be in Finance’s vendor payment system.

**[42]** The deputy minister’s letter of May 10, 2022, is refreshingly candid about the reasons why the error occurred. Someone entered the wrong digit in a vendor code. The “multiple” processes intended to catch coding errors did not catch this one. The deputy minister also acknowledges that the Toronto address should have been purged by 2018-19 at the latest, but was not, due to “vacancy and



capacity issues". The roots of the problem, then, are deeper than the slip of a finger on a keyboard.

### *Correction of personal information*

**[43]** The ATIPPA also includes a right to the correction of personal information:

45. (1) An individual who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

**[44]** Although neither the Complainant nor Finance has referred to section 45, part of the Complainant's grievance involves Finance's failure to use consistently the current contact information supplied to them by the Complainant. In my view, it is useful to consider the case through the lens of section 45.

**[45]** When Finance first passed the file to the collection agency, they may have been unaware of the Complainant's current contact information. The cheque was cashed, so Finance could reasonably assume that the Toronto address was valid. However, at some point the Complainant did give Finance their current contact information and told Finance that the Toronto address was incorrect. Nevertheless, says the Complainant, the collection agency continued to contact the Toronto address.

**[46]** There is another recent Review Report on a privacy complaint in which the root problem was Finance's failure to send a tax document to the right address: *Department of Finance (Re)*, 2021 NUIPC 3 (CanLII) at paragraph 51. It appears that Finance needs to do better in gathering correct address information and, especially, discarding incorrect address information.

### **Conclusion**

**[47]** Finance did not make reasonable security arrangements to ensure that personal information in its vendor payment system was, after a reasonable period, archived or deleted.

[48] Finance did not comply with section 42 of the ATIPPA and thereby breached the Complainant's privacy.

### **Recommendations**

[49] **I recommend** Finance review its policy and procedures for archiving or deleting personal information in its vendor payment system. For example, if there has been no activity on a vendor file for a reasonable period set by policy, any personal information in the vendor file should be automatically archived or deleted.

[50] With respect to this Complainant, **I recommend** that Finance follow through on the deputy minister's letter of May 10, 2022, to ensure that there is no remaining record of the debt on the Complainant's credit file, and **I further recommend** that Finance write to the Complainant to confirm this step has been taken. (Finance should note that the collection agency is not the same company that maintains consumer credit files, so writing only to the collection agency, as promised in the deputy minister's letter, is insufficient.)

[51] With respect to this Complainant, **I recommend** that Finance delete the Complainant's personal information from its vendor payment system, unless there is a specific operational or audit requirement to retain it.

[52] With respect to this Complainant, **I recommend** that Finance review its vendor payment system to ensure there is no remaining trace of the Toronto address given by the Complainant to Finance in 2009.

Graham Steele

ბრძან / Commissioner / Kamisina / Commissaire