

Issues

- [4]** The issues in this review are:
- a. Was there an unauthorized disclosure of the Complainant's personal information?
 - b. If so, what should Health do to reduce the risk of similar privacy breaches in future?

Facts

[5] The Complainant adopted a baby. They decided not to tell family or friends right away.

[6] The Complainant took the child for a public health check-up. While in the public health clinic, a staff member, who knew the Complainant, stopped to converse. The staff member congratulated the Complainant on the adoption. The staff member said they had seen details on the daily list that public health receives from Qikiqtani General Hospital. The staff member was not involved in the check-up.

[7] About a week later, the Complainant was congratulated by a co-worker. The Complainant, who had not told the co-worker, asked how they knew. The co-worker said they had been told by the staff member from the public health clinic. The staff member had no work-related reason to share the information, and the Complainant's co-worker had no work-related reason to know it.

[8] The Complainant contacted the staff member by text and told them what the co-worker had said. The Complainant added that nobody was supposed to know. The staff member replied "So sorry, I didn't realize that you weren't telling people yet". The Complainant asked if the staff member had told anyone else. The staff member replied "No one".

[9] It is relevant to note that this Complainant suffered a previous privacy breach of their personal health information. It was the subject of a Review Report by the former Commissioner.

Law

[10] “Personal information” is defined in section 2 of the ATIPPA to mean “information about an identifiable individual”.

[11] Part 2 of the ATIPPA deals with the protection of privacy, and specifically with the collection, use, and disclosure of personal information. Division C of Part 2 deals with the disclosure of personal information. Section 47 lays down the basic rule:

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

Paragraph (a) refers to Part 1 of the ATIPPA, which is the access-to-information part. It is not relevant to the present case. Paragraph (b) refers to “this Division”, which covers sections 48, 48.1, and 49. Nothing in those sections is relevant to the present case.

[12] If neither section 47(a) nor 47(b) applies, then the public body (and its employees and contractors) must not disclose the personal information.

Analysis

[13] There was a breach of the Complainant’s privacy. That can hardly be disputed. The real issue in this case is what to do about it.

[14] Anyone visiting a health-care facility to seek care for themselves or a loved one has to trust that staff will respect their privacy. Obviously that applies to the personal health information collected during the visit, but it also applies to why the person was there, who they were with, and even the fact that they visited at all.

[15] The adoption of a child can be a particularly sensitive and stressful time for all concerned. There is a statutory revocation period during which consent to the adoption can be revoked. For adoptive parents, the question of who to tell, and when to tell them, can be a very delicate matter indeed. And so it was with the Complainant in this case.

[16] That delicate life decision was taken out of the Complainant's hands by a staff member at the public health clinic. The staff member told one of the Complainant's co-workers about the baby. To put it in legal terms, the staff member disclosed, without authorization, the Complainant's personal information. This caused significant stress for the Complainant, who could not know for sure how far the news had spread. The Complainant immediately had to revise their plans about when to inform their family and friends, lest the news get to them in some other way.

[17] The Department of Health says the staff member acted without malice. I am certain that is true. It is, however, irrelevant. For an adoptive parent in the midst of a life-changing event, a privacy breach is a privacy breach, regardless of the staff member's motives and intentions.

Workplace discipline

[18] The Complainant asks whether there will be some form of workplace discipline for the staff member. Health has said there will not.

[19] In previous decisions, I have said it is not my role to recommend workplace discipline: *Department of Community and Government Services (Re)*, 2021 NUIPC 8 (CanLII) at paragraph 55; *Department of Health (Re)*, 2021 NUIPC 2 (CanLII) at paragraph 39. I maintain that position in this case.

[20] Workplace discipline, if done properly, must be informed by an employee's entire workplace history. That goes far beyond anything I can or should consider in an ATIPPA review. The only exception might be a case in which an employee's actions are so reprehensible that suspension or termination, regardless of workplace history, is the only appropriate response. I have seen a few cases that may fit in that category, but the present case is not remotely one of them.

[21] I would go further, and add that a focus on blame and punishment for privacy breaches may sometimes be counterproductive. A culture of privacy is like a workplace safety culture – everyone is safer if mistakes are quickly acknowledged and corrected. A fear of blame or discipline may drive infractions underground.

Apology

[22] The Complainant would like to receive a sincere apology from Health.

[23] Health says the staff member has already apologized. The Complainant says a single, in-the-moment text (“So sorry, I didn’t realize that you weren’t telling people yet”) is not a real apology. There has been no other contact between the Complainant and the staff member.

[24] On this point, I agree with the Complainant. The focus of the ATIPPA, and my focus, is on the public body itself, rather than on an individual employee. Health, as the public body responsible for Nunavut’s health system, has yet to offer an apology to the Complainant. I recommend it do so.

[25] The situation has been made a little worse, in my view, by Health’s written response to the privacy breach complaint. The Complainant takes issue with the statement of facts in Health’s response. To the Complainant, it appears either that Health is questioning the Complainant’s truthfulness, or that Health has been careless in its investigation. Either way, the Complainant believes Health is downplaying what happened and the serious impact it had on the Complainant’s life.

[26] Some of what Health wrote is, in my view, more a question of unclear writing than anything else. I do not believe Health is questioning the Complainant’s truthfulness. To the extent there remains any discrepancy between the Complainant’s version of events and Health’s version of events, I adopt the Complainant’s version.

[27] It should also be borne in mind that this is not the first time the Complainant has suffered a breach of privacy at the hands of a Health employee. There is a history here. It is understandable if the Complainant is somewhat suspicious of Health's sincerity.

[28] A written apology from Health to the Complainant would, in my view, go some ways to addressing the Complainant's concerns.

Compensation

[29] The Complainant would like to receive some compensation for the privacy breach, which I understand to mean financial compensation.

[30] I am bound by the ATIPPA. Financial compensation is not a remedy available under the ATIPPA. I cannot award it or recommend it. Any financial compensation would have to be an *ex gratia* payment from the GN, or a settlement of a legal action, or an award from a court.

Reducing the risk of similar privacy breaches

[31] I now turn to the real heart of this decision: what, if anything, can Health do to reduce the risk of similar privacy breaches in future?

[32] Staff in health settings are going to learn information, some of it highly personal and sensitive, about people they know. The goal is for health staff to be so deeply immersed in a culture of privacy that they would not even consider disclosing that personal information to anyone else.

[33] It is essential that health staff ask themselves, before sharing personal information, "How do I know this?". If the answer is "I learned it at work", then they must not share it with anyone. They should make no assumptions about who in the patient's circle already knows the information – not spouses, parents or other family members; not neighbours, friends or co-workers; and not other health staff.

[34] That is easy to say, and hard to do. How do we get there?

[35] A culture of privacy, as the name implies, is not any one rule or any one practice. It is an environment. A privacy environment is reinforced every day, in ways large and small, spoken and unspoken, from top to bottom of the organization. A good privacy environment will include at least the following elements:

- a. Management that supports and models best privacy practices.
- b. An emphasis on coaching, mutual support, and encouragement.
- c. For new hires, an orientation that includes a privacy component.
- d. For all staff, a written oath to uphold patient privacy.
- e. For all staff, mandatory privacy training, repeated at regular intervals.
- f. A set of written privacy policies that are easy to understand, easy to find, regularly updated, and regularly referenced.

[36] To some extent, these measures are in place, or in the process of being put in place, at Health. There are forward steps and backward steps, and from what I have seen over my time as Information and Privacy Commissioner, some inconsistency and lack of follow-through. Health is doing reasonably well but it must never slack in its efforts to create and sustain a privacy culture.

[37] I believe it is important that my recommendations be proportionate to the facts of a given case. I do not, for example, have information suggesting that this kind of privacy breach is common, and so I decline to recommend training or other remedial measures that would apply to all Health staff.

[38] For the present case, I believe it is sufficient, and proportionate to the facts, to recommend (a) a refresher course on privacy for the staff member, and (b) a reminder from management to the public health team in the community concerned, either by way of memo or team meeting, about the importance of not

sharing outside the workplace any personal information learned inside the workplace.

[39] The facts of this case would be a good example to use in future training. Any slip, no matter how well-intentioned, can have serious consequences.

Privacy breach notification

[40] This matter came to my attention via a privacy breach complaint from the Complainant on February 18, 2023. According to Health, they were unaware of the privacy breach until I contacted them about the complaint.

[41] The Complainant has given me evidence that the situation was earlier brought to the attention of a senior manager at Heath. The timing is not entirely clear because the communication occurred through a third party, but it did happen. And of course the staff member who told the Complainant's co-worker about the adoption was aware, as soon as they received the text from the Complainant, that a privacy breach had occurred. Nevertheless, the situation was not reported to Health's ATIPP Coordinator, who is supposed to be the key person for receiving, assessing, investigating, and reporting on privacy breaches.

[42] The privacy breach reporting provisions of the ATIPPA can only work if privacy breaches are, in fact, reported. The Department of Health is generally very good, perhaps the best in the GN, at reporting privacy breaches. In this case, it appears the Health staff who were aware of the privacy breach either were not aware of their reporting obligation, or chose not to report it.

Conclusion

[43] There an unauthorized disclosure of the Complainant's personal information.

Recommendations

[44] I **recommend** that Health make a written apology to the Complainant.

[45] I **recommend** that Health require the staff member who breached the Complainant's privacy to take a refresher course on privacy.

[46] I **recommend** that Health management remind the public health team in the community concerned, either by way of memo or team meeting, about the importance of not sharing outside the workplace any personal information learned inside the workplace.

[47] I **recommend** that Health remind all staff of the internal process for reporting privacy breaches.

Graham Steele

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