

Issues

- [5]** The issues in this review are:
- a. Was there a breach of the Complainant's privacy?
 - b. If so, was HR responsible for the privacy breach?

Facts

[6] The Complainant is a GN employee. Their department, position, and community are not relevant to this decision. I have omitted them because that information would tend to identify the Complainant.

[7] The Department of Human Resources had a letter it wanted to send to the Complainant. It was an important letter and contained sensitive personal information about the Complainant. (There was also time-sensitive information, but that is a different issue unrelated to the privacy breach.)

[8] The letter was prepared by an HR employee in Iqaluit for the deputy minister's signature. After the deputy minister signed the letter electronically on January 12, 2023, the same employee printed it, put it in an envelope, sealed the envelope, and hand-printed the address on the front of the envelope. Although the employee did not realize it, the postal code contained a one-character error.

[9] The same employee then ran the envelope through HR's in-house postal meter, and personally took the envelope to the post office in Iqaluit. Unfortunately the letter did not have sufficient postage, so the employee took it back to HR's offices and ran it through the postal meter again. At this point, the employee no longer had time to take it back to the post office. They asked someone else to do it.

[10] Four days later (which included a weekend) a different HR employee took the envelope to the Iqaluit post office. The employee took a picture of the envelope just before it was handed over at the post office. In the photo, the envelope appears intact. A receipt shows the envelope was received at the Iqaluit post office at 2:50pm on January 16.

[11] Canada Post’s tracking data shows that the envelope took a very circuitous route from Iqaluit to the Complainant’s community. It was routed through four different Canadian cities, two of them twice, before finally reaching its destination on March 15.

[12] The next day, the Complainant signed for the letter at the community post office. The envelope was already open. The top was intact, but there was a cut (not a tear) down the full length of the right side. Anyone handling the envelope could have taken out the letter, read it, and then put it back.

[13] The following day, the Complainant filed a privacy breach complaint with this office.

Law

[14] Section 47 of the ATIPPA lays down the basic rule about disclosure of personal information:

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

Neither paragraph 47(a) nor 47(b) applies in the present case. Therefore HR had a duty not to disclose to anyone else the Complainant’s personal information.

[15] The exposure of someone’s personal information is “disclosure”, even if there is no evidence that the personal information was actually seen by an unauthorized person: *Department of Finance (Re)*, 2021 NUIPC 3 (CanLII) at paragraph 42 (“disclosure includes the possibility of disclosure”).

[16] Section 42 of the ATIPPA lays down the standard for safeguarding personal information:

- 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.

In *Department of Health (Re)*, 2023 NUIPC 6 (CanLII) at paragraph 49, I elaborated on what “reasonable security arrangements” look like.

Analysis

[17] The Complainant is understandably upset that their sensitive personal information was exposed. The envelope containing the letter was cut open by someone. But when, and by whom?

[18] Two HR employees handled the envelope. They remember it. They have told me, step by step, what they did with it. I accept their evidence in full. Based on what they have told me, as well as the picture of the envelope taken at the Iqaluit post office, I find that the envelope was intact when it passed from the custody of the GN to the custody of Canada Post.

[19] When the Complainant received the envelope at their community post office, the envelope was cut open down the right side. The envelope must have been opened at some point within the Canada Post system. But I have no jurisdiction over Canada Post and I cannot investigate what happened inside Canada Post.

[20] HR is therefore not responsible for the privacy breach.

[21] That finding of fact is enough for me to conclude my review. I do, however, have some additional comments that I hope HR will find helpful. The following comments are not formal recommendations.

Delivery delays

[22] The letter took two months to travel from Iqaluit to its intended destination. During that time, it passed through four different Canadian cities, two of them twice.

[23] As noted in the Facts section above, there was a one-character error in the postal code. At some point, someone crossed out the postal code with a black marker, and hand-printed the correct postal code. The HR employees did not do it. It must have been someone within Canada Post.

[24] It is possible that the postal code error caused the letter to go on its two-month odyssey across Canada. But in Nunavut, each community has one postal code covering the entire community. As long as the community is correctly named (as it was in this case) a postal code error should not, one would hope, cause such a significant delay.

[25] I do not have any statistical information before me about delivery times for mail going from one Nunavut community to another. Perhaps this case is an anomaly, or perhaps it is a symptom of a deeper issue.

[26] Canada Post does appear to struggle with postal service in Nunavut: see, for example “Rankin Inlet post office worker crying out for help”, Nunavut News, November 14, 2022; “Canada Post woes rankle Rankin Inlet”, Nunavut News, February 7, 2022; “Canada Post promises long-term changes to Iqaluit postal struggles”, CBC.ca, November 27, 2020; “‘An overwhelming situation’: Canada Post begs Iqaluit residents to pick up their parcels”, National Post.com, October 7, 2020; “Canada Post looks to improve service in Iqaluit”, CBC.ca, April 9, 2015. There are unique challenges to mail delivery in Nunavut. Methods that work well in southern Canada may not work here.

[27] Delivery delays increase the risk of a privacy breach. Given the sensitivity of the personal information that HR is sometimes handling, I suggest that HR consider whether there is a general problem with Canada Post delivery delays in Nunavut. If there is, I suggest that HR at least consider alternatives, at least for letters containing sensitive personal information.

Using registered mail

[28] The principal benefit of using registered mail is that it provides proof of delivery into the hands of the addressee. (It also offers tracking, but that feature is available for some non-registered mail too.) A piece of registered mail is supposed to be handed over only if the addressee, showing proof of identity, signs for it. The addressee’s signature is then available to the sender as proof of delivery.

[29] The evidence before me indicates, however, that nobody in HR was tracking the envelope's progress. Nobody in HR knew that the letter was taking a slow wander across southern Canada. Nobody in HR was checking to see if or when the Complainant signed for the letter. The benefit of using registered mail appears to have been lost.

[30] It is possible there is a belief within HR that registered mail is more secure than other delivery methods. But there is nothing inherently secure about registered mail. Before the addressee signs for it, a registered letter is as subject to loss, damage, or theft as any other letter.

[31] Although the privacy breach in this case was not HR's responsibility, I suggest that HR consider whether registered mail continues to meet the "reasonable security arrangements" standard in section 42 of the ATIPPA. There are electronic delivery methods that can provide proof of receipt and security of access. They are also much faster. Perhaps it is time for HR to re-think the use of registered mail as its preferred delivery method.

Conclusion

[32] There was a breach of the Complainant's privacy. The open envelope was an unauthorized disclosure of personal information.

[33] The Department of Human Resources was not responsible for the privacy breach.

Recommendations

[34] Because I have found that HR was not responsible for the privacy breach in this case, I do not make any formal recommendations.

[35] I suggest that HR consider whether using registered mail for letters containing sensitive personal information continues to meet the "reasonable security arrangements" standard in section 42 of the ATIPPA.

Graham Steele

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