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Nunavut Information and Privacy Commissioner
Nunavunmi Tuhaqtauyukhaliqinirmun Kanngunaqtuliqinirmun Kamisina
Commissaire à l'information et à la protection de la vie privée du Nunavut

Commissioner's Final Report

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Summary

[1] An employee of the Department of Health complained that a manager breached their privacy by sharing personal information with a co-worker. The Commissioner finds there was a privacy breach. The Commissioner makes no recommendations for further action by Health.

Nature of Review and Jurisdiction

[2] This is a review of a privacy breach complaint. The request was filed under section 49.1(1) of the *Access to Information and Protection of Privacy Act* (ATIPPA). I conducted my review under section 49.2(1).

[3] I have jurisdiction over the Department of Health: ATIPPA, section 2, definition of "public body".

Issues

[4] The issues in this review are:

a. Was there an unauthorized disclosure of the Complainant's personal information?
b. If so, what is the appropriate remedy?

Facts

[5] It is the practice of this office, in keeping with section 56(3)(b) of the ATIPPA, to write Review Reports so that the participants cannot easily be identified. Details like names, communities, genders, and positions are omitted unless they are directly relevant to the decision.

[6] In this case, a full discussion of the facts would make it too easy to identify those involved. I have therefore taken additional steps to blur the details without, I hope, making the decision too hard to understand.

[7] The Complainant (EMP1) is a Health employee. There are other employees in the Complainant's work unit. The co-worker most directly involved in this case I will refer to as EMP2. I will refer to the Complainant's managers as MGR1, MGR2 and MGR3.

[8] In early February 2024, the Complainant corresponded by e-mail with MGR1. The subject-matter was a request for leave which had been denied by MGR1. The e-mail, which I have seen, contains information about the Complainant, their partner, their plans, their leave credits, and other matters related to the leave request.

[9] MGR1 shared the e-mails with MGR2 and MGR3. At the relevant time, MGR2 was on leave and was not looking at work e-mails. MGR3 only glanced at the forwarded e-mail but did not read it through.

[10] At the time the e-mail was sent, the Complainant was out of the territory. When the Complainant returned to Nunavut, their co-workers appeared to be aware of some of the personal information in the e-mail. The co-workers told the Complainant that they had learned the personal information from EMP2 during a social occasion.

[11] Prior to the social occasion, MGR1 and EMP2 had a private meeting at which certain workplace issues were discussed. Both MGR1 and EMP2 deny that the Complainant's personal information was disclosed during this meeting.

[12] During my investigation into the complaint, I interviewed the Complainant and MGR1. EMP2 left Nunavut shortly after the events in question. I corresponded with EMP2 by e-mail. I also interviewed others, but I will not say who or how many. For the reasons given later in this decision, I believe there is a risk of workplace repercussions if those who spoke with me are identified.

Law

[13] The core legal question in this case is whether there was an unauthorized disclosure of the Complainant's personal information.

[14] Section 47 lays down the basic rule for 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.

Part 1 (access to information) is not relevant to the present case. The words "this Division" in paragraph (b) covers sections 47 to 49. Within those sections, only sections 48 and 48.1 are relevant.

[15] Section 48 is a long list of circumstances in which disclosure of personal information is authorized. The only portions of the list that could be relevant to the present case are the following:

> 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;
>
> …
>
> (g) for the purpose of hiring, managing or administering personnel of the Government of Nunavut or a public body;
>
> …
>
> (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; [or]
>
> …

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

The list in section 48 is exhaustive. If a case does not fit within one of the paragraphs of section 48, disclosure of personal information is not permitted.

[16] The meaning of the phrase "a use consistent with that purpose" in paragraph 48(a) is explained in section 48.1:

> 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.

For section 48.1 to apply, both paragraph (a) and paragraph (b) must be satisfied.

[17] "Personal information" is defined in section 2 of the ATIPPA to mean "information about an identifiable individual". There follows a list of examples, none of which is directly relevant to the present case. The list begins with the word "including", so the list is not exhaustive.

Analysis

[18] The essence of the privacy breach complaint is that MGR1 shared the Complainant's personal information with EMP2, who then shared it with other employees in the work unit.

[19] A privacy complaint of this kind is rare. That is a good thing. As I have noted previously, the ATIPPA is a blunt instrument for dealing with disputes within a GN workplace: *Department of Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13 (CanLII) at paragraph 26; *Department of Human Resources (Re)*, 2021 NUIPC 19 (CanLII) at paragraphs 30 to 34.

[20] A GN employee has the right, if they wish, to file a privacy breach complaint. The present complaint fits within the words of the law. Unlike in

Department of Education (Re), 2022 NUPC 20 (CanLII) at paragraph 17, I do not see any better forum in which the complaint could be resolved.

[21] I do worry, however, that I am being drawn unwillingly into a wider workplace dispute. This work unit appears to suffer from simmering tension between some employees, and between management and employees. These tensions have made my investigation more difficult than usual. There are alliances and undercurrents of which I am only dimly aware.

[22] Senior managers at Health would do well to address the tensions in this workplace. No matter what I decide, it will not resolve the underlying workplace dysfunction. This decision may become just another source of tension. Or to use a different metaphor, it may become another arrow in the quiver of one side or the other. I do not think that is what the Legislative Assembly had in mind when they put the privacy protections in the ATIPPA.

Personal information

[23] I find that the e-mail from the Complainant to MGR1 contained "personal information" within the meaning of the ATIPPA. The personal information about which I am concerned is information about the Complainant's eligibility for leave.

Was there disclosure?

[24] Certainly everybody in the work unit knew about the leave for which the Complainant had applied. The work unit posted employees' scheduled leave on a noticeboard. Besides, there had been lots of workplace discussion, in which the Complainant participated, about the Complainant's travel plans. There was no problem with any of this. It was normal workplace chatter.

[25] Later, the Complainant's scheduled leave was erased from the noticeboard, so everybody knew the Complainant was not going to take the leave after all. What was <u>not</u> widely known was the reason the leave had been cancelled.

[26] Meanwhile, there was a broader, unresolved issue within the work unit. The exact nature of that issue is not relevant to this decision. I will say only that the unresolved issue, combined with erasure of the Complainant's leave from the

noticeboard, led to gossip and speculation among the Complainant's co-workers about what was going on.

[27] MGR1 and EMP2 agree that, in this environment, they had a private meeting that touched on conditions in the workplace. They agree that their conversation that day was wide-ranging, and was about much more than the workplace. Both deny that their conversation "crossed the line" to the sharing of the Complainant's personal information.

[28] A few days later, EMP2 met with some co-workers at a social occasion. I find that, at this event, EMP2 did share the Complainant's personal information with co-workers. But where did EMP2 get that personal information?

[29] I rule out MGR2 or MGR3 as the source of the personal information. The Complainant's e-mail had been forwarded to them, but MGR2 was on leave and not looking at work e-mail, and MGR3 only glanced at it and did not share it with anyone else.

[30] I rule out the Complainant as the source of the personal information. There had been lots of discussion within the workplace about the Complainant's travel plans, but that is not the "personal information" at issue. The personal information that EMP2 shared with co-workers included details that the Complainant had shared only with MGR1.

[31] I find, on a balance of probabilities, that EMP2 obtained the personal information from MGR1. It is the only reasonable explanation for how EMP2 came to have that information. Moreover, a co-worker present at the social occasion says that EMP2 said words to the effect "I have the other side of the story" and cited MGR1 as the source. EMP2 says they do not remember saying those words, but I find, on a balance of probabilities, that EMP2 did say those words or something similar.

[32] I accept MGR1's and EMP2's evidence that their private conversation about workplace issues was relatively brief and innocuous. Nevertheless, it would not have taken much for the personal information in the Complainant's e-mail to slip out. I am doubtful that MGR1 did literally show an e-mail from the Complainant

to EMP2, as EMP2 allegedly said to their co-workers. I do not need to decide that. I find that, one way or another, MGR1 disclosed the Complainant's personal information to EMP2.

[33] This disclosure of personal information did not fit within any of the paragraphs of section 48 (see paragraph 15 above). The disclosure was not for the purpose for which the personal information was collected or a consistent purpose. It was not necessary to manage the work unit. It was not required by law. EMP2 had no operational reason to know the personal information.

[34] Since the disclosure did not fit within section 47 (see paragraph 14 above) the disclosure was not authorized. It was a breach of the Complainant's privacy.

Remedy

[35] Although I have found there was a breach of the Complainant's privacy, I leave it up to Health to decide what, if anything, to do as a follow-up to this finding.

[36] It is not my role to recommend employment discipline, except in the most serious cases: *Department of Health (Re)*, 2023 NUIPC 5 (CanLII) at paragraphs 19 to 21; *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. The present case is not remotely close to being in that category.

[37] In *Department of Health (Re)*, 2023 NUIPC 5 (CanLII) at paragraph 21, I wrote the following words which are equally applicable to the present case:

> …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.

[38] In the present case, I do not see a problem with "the practices of the public body": ATIPPA, section 49.1(2). The privacy breach in this case was a lapse in judgment by MGR1, not a deficiency in policies or procedures.

[39] In *Department of Health (Re)*, 2023 NUIPC 5 (CanLII) at paragraph 35, I wrote about the development of a culture of privacy within the health-care system. That case concerned a breach of patient privacy. The basic idea, however, is equally applicable to a breach of employee privacy:

> 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.

[40] For these reasons, I believe the remedy is best left in the hands of the Department of Health. I suggest that Health consider reminding all managers about the appropriate means and forums for airing any workplace frustrations. Health should consider providing advice to MGR1 with a view to avoiding any similar breach in future. An apology to the Complainant may also be in order, but again, I leave that up to Health and MGR1. Finally, as noted in paragraph 22 above, Health would do well to address the underlying tensions in this workplace. That, more than anything else, is likely to reduce the risk of unauthorized disclosure to co-workers of an employee's personal information.

Conclusion

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

[42] The appropriate remedy is best left to Health (see paragraphs 35 to 40).

Recommendations

[43] Given my conclusion in paragraph 42, I make no formal recommendation.

Graham Steele
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