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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

## Summary

**[1]** The Representative for Children and Youth filed a privacy breach complaint, alleging that the organizational structure of the Department of Family Services created a systemic breach of privacy on child-protection files. The Commissioner finds that recent reorganizations within Family Services may result in personal information in child-protection files being seen by staff who are not authorized to do so. The Commissioner recommends that Family Services re-align its structure and the law, either by amending the law or changing its structure.

## Nature of Review and Jurisdiction

**[2]** This is a review of a privacy breach complaint. The complaint 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 Family Services: ATIPPA, section 2, definition of “public body”.

## Issues

[4] The issues in this review are:

- a. Is the Assistant Deputy Minister of Family Wellness covered by section 71(2)(f) of the *Child and Family Services Act*?
- b. If personal information is being disclosed contrary to section 71(2)(f), what is the appropriate remedy?

## Facts

[5] On March 6, 2025, I received a letter from the Representative for Children and Youth outlining a privacy breach complaint against the Department of Family Services. The essence of the complaint is in the following sentence from the letter:

The concern is the current reporting structure has the Assistant Deputy Minister receiving and accessing information on an ongoing basis related to child(ren) and/or parent(s) receiving services under the *Child and Family Services Act* (CFSA) without legal authority or delegation.

The complaint provides further particulars of how Family Services organizes itself for child-protection purposes, and quotes section 71 of the *Child and Family Services Act* (CFSA). I will return to section 71 in the Law section below.

[6] The Representative for Children and Youth is an independent officer of the Legislative Assembly. The Representative's office generally goes by the acronym RCYO, which I will use in this decision.

[7] The statutory foundation for the RCYO is the *Representative for Children and Youth Act* (RCYA). The role of the RCYO is in the RCYA's preamble:

...guided by Inuit culture and Inuit societal values, [the RCYO] will advocate for the rights and interests of children and youth and assist the Legislative Assembly and the Government of Nunavut in ensuring that the needs of children and youth are met.

**[8]** Family Services challenged my jurisdiction to review a privacy breach complaint of this kind. In *Department of Family Services (Re)*, 2025 NUIPC 4 (CanLII), also known as Review Report 25-285, I found that I do have jurisdiction.

**[9]** The reporting structure for child-protection files handled by Family Services is set out in the CFSA. The CFSA gives authority to the Director of Child and Family Services appointed under section 51(1) of the CFSA. All other authority then flows as a delegation from the Director, whether to an assistant Director (section 53), Child Protection Worker (section 54), or an authorized person (section 55).

**[10]** In 2023, Family Services re-organized its reporting structure. The organization chart reflecting the change is dated August 1, 2023. Family Services renamed the Director position “Territorial Director, Family Wellness Services”. The Director now reported to an Assistant Deputy Minister (ADM), Family Wellness.

**[11]** The Child Protection Workers (renamed Community Social Services Workers or CSSWs) now reported through a hierarchical chain of command that included a supervisor, a regional manager, and a regional director. The regional directors reported to the ADM.

**[12]** It was in relation to this 2023 reporting structure that the RCYO filed its privacy breach complaint. The RCYO and Family Services corresponded about the reorganized structure and what it meant for confidentiality, but Family Services did not accept the RCYO’s analysis.

**[13]** In April 2025, after the RCYO complaint was filed with this office, Family Services again re-organized its reporting structure. The organization charts reflecting the change are dated either April 22 or 24, 2025.

**[14]** The Director of Child and Family Services position now appears to have been split into two positions: Director of Family Wellness for Statutory and Strategic Initiatives and Director of Family Wellness for Service Delivery. Both positions report to the ADM Family Wellness.

**[15]** The CSSWs now report through a chain of command that includes a supervisor and a regional manager. There are four service regions. The four regional managers report to the Director of Family Wellness for Service Delivery.

**[16]** At the time of writing, it is not entirely clear whether the April 2025 reorganization is fully in place or is an objective towards which Family Services is transitioning. It appears to be the latter. The moving target has created some difficulty for this review.

## **Law**

**[17]** Section 51 of the CFSA requires the Minister to appoint a Director of Child and Family Services. The CFSA clothes the Director with all the necessary powers and duties for child-protection matters.

**[18]** The Director can appoint the following persons:

- a. Assistant Director for one or more communities (section 53).
- b. Child Protection Workers (section 54).
- c. An authorized person (section 55).

These persons hold the powers and duties laid down by the CFSA and Regulations, to the extent they are delegated or authorized to do so by the Director.

**[19]** Sections 71 and 72 of the CFSA set out the rules for confidentiality and disclosure of child-protection files. These sections are long but, because they are central to this case, I will quote them in full. We should pay particular attention to section 71(2)(f):

71. (1) Any information or record of information relating to a child or his or her parent is confidential where it is received, obtained or retained by any person
- (a) under this Act or the regulations;
  - (b) in the exercise of his or her powers or in the performance of his or her duties under this Act or the regulations;
  - (c) who operates a child care facility or foster home respecting a child in the care of the child care facility or foster home; or

(d) who is employed by or retained on contract to provide services to a child care facility or foster home respecting a child in the care of the child care facility or foster home.

(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;
- (c) where giving evidence in court;
- (d) on the order of a court;
- (e) to a person appointed to conduct an investigation under section 64 or 65;
- (f) to the Minister, the Director, an assistant Director, a Child Protection Worker or an authorized person, at their request;
- (g) to a peace officer, if the person believes on reasonable grounds that
  - (i) failure to disclose the information or record of information is likely to cause physical or emotional harm to a person or serious damage to property, and
  - (ii) the need for disclosure is urgent;
- (h) where a disclosure or communication is required for the purposes of this Act or to protect a child;
- (i) where necessary for the provision of care, counselling or education to the child;
- (j) where, in the opinion of the Minister, the benefit of the release of the information would clearly outweigh any invasion of privacy that could result from the release; or
- (k) where it is required for the purposes of this Act.

72. Any information or record of information disclosed under subsection 71(2) shall be used only for the purpose for which it was disclosed and shall not be disclosed further.

(Emphasis added.)

[20] The position of Assistant Deputy Minister is not mentioned anywhere in the CFSA.

## Analysis

[21] While working on child-protection cases, Family Services staff inevitably gather a great deal of personal information about children and their families. This Review Report is about who is allowed to see that information.

[22] There are serious problems within Nunavut's child protection system. As I wrote in *Department of Family Services (Re)*, 2023 NUIPC 15 (CanLII) at paragraph 37:

It is no secret that Nunavut's child protection system is in crisis. On May 30, 2023, the Auditor General of Canada tabled a report in the Legislative Assembly on child and family services in Nunavut. The report can only be described as devastating. It is the Auditor General who uses the word "crisis". The report echoes concerns raised repeatedly, over a period of years, by Nunavut's Representative for Children and Youth. DFS's "inability to meet its responsibilities" (again, the words of the Auditor General) cries out for more accountability.

[23] In response to the Auditor-General's report, the Premier declared a "whole-of-government approach" was required ("Premier responds to Auditor General's reports", GN news release, May 30, 2023). Family Services has, of course, been at the forefront of the GN's response.

[24] The need for action does not, however, give the GN or Family Services *carte blanche* to do whatever it wants. It must still follow the law. The relevant law on privacy is the CFSA, through section 48(u) of the ATIPPA.

[25] The RCYO argues that Family Services' recent re-organizations mean it is routinely breaching the privacy rights of children and families whose personal information is contained in child-protection files. The RCYO's complaint to this office is focused on the role of the ADM, and so is this review. The most recent Family Services re-organization means, however, that the analysis may also apply to other positions.

**[26]** For the reasons that follow, I agree with the RCYO that there is a systemic problem with the confidentiality of child-protection files. The more difficult question, in my view, is what to do about it.

*ATIPPA and the CFSA*

**[27]** Section 48 of the ATIPPA is a long list of circumstances in which a public body may disclose personal information. In this case, I focus on paragraph (u) of section 48:

48. A public body may disclose personal information

...

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

....

**[28]** Section 48(u) requires me to consider whether there is any Act that “authorizes or requires” the disclosure. In the context of child-protection files, that means I must look at sections 71 and 72 of the CFSA.

*Departmental organization and the CFSA*

**[29]** Normally a public body is free to organize itself as it wishes. Statutes assign tasks to public bodies, and the *Public Service Act* gives public bodies broad authority to organize themselves as they see fit to carry out their statutory mandates. Family Services cites the *Public Service Act* in support of its reorganizations.

**[30]** But occasionally there are statutory limits. The *Child and Family Services Act* is one such limit. The whole scheme of the Act is to set up a detailed organizational structure to deal with child-protection matters. At the top of the structure is the Director of Child and Family Services. All powers and responsibilities flow from the Director, not the Minister. When a child-protection decision is challenged in court, it is the Director, not the Minister, who is the respondent.

**[31]** The confidentiality rules in the CFSA reflect this unique, purpose-specific organizational structure. The disclosure rules in the CFSA are explicitly tighter than the disclosure rules in the ATIPPA.

**[32]** Section 71(2)(f) lists the people to whom personal information in child-protection files may be disclosed: “the Minister, the Director, an assistant Director, a Child Protection Worker, or an authorized person”. I will now consider each in turn.

*“The Minister”*

**[33]** Section 71(2)(f) of the CFSA says that “the Minister” may receive personal information in child-protection files. Does that word include all Family Services employees?

**[34]** In our system of responsible government, statutory authority is generally assigned to the Cabinet Minister who heads an executive department. There are many instances in Nunavut legislation empowering “the Minister” to do something, but nobody seriously expects that the Minister will personally perform all those duties. The Minister’s responsibilities are delegated to their staff.

**[35]** This concept is captured in section 33(1) of the *Legislation Act*, especially paragraph (c):

33. (1) Words in an enactment directing or empowering a Minister include
- (a) another member of the Executive Council acting as or for the Minister;
  - (b) the deputy head of the department or public agency that administers the enactment;
  - (c) a person employed in an appropriate capacity in the department or public agency that administers the enactment; and
  - (d) a person authorized in writing, by name or by office, to do that act or thing by the Minister.

**[36]** Normally, then, the reference to “the Minister” in section 71(2)(f) of the CFSA would include every person “employed in an appropriate capacity” in Family Services, including the ADM.



**[37]** The rules in Part 1 of the *Legislation Act*, including section 33, are however subject to the limitation in section 6(1) of the *Legislation Act*:

6. (1) Every provision of this Part applies to every enactment, whenever enacted, unless a contrary intention appears in this Part or in another enactment.

(Emphasis added.)

**[38]** In my view, the structure of the CFSA and the context of section 71(2)(f) does represent a contrary intention to the normal interpretation of the word “Minister”. I say that because of two common-law rules of statutory interpretation.

**[39]** The first rule is that the general words of one provision cannot override the specific words of another provision. The purpose of this rule is to ensure that each provision in a statute is given meaning.

**[40]** In this case, the general rule in section 33(1)(c) of the *Legislation Act* must give way to the specific list in section 71(2)(f) of the CFSA. The same reasoning applies to the general words of the *Public Service Act*, or the general words of sections 71(2)(a) and 71(2)(h) of the CFSA. Otherwise section 71(2)(f) of the CFSA becomes meaningless.

**[41]** The second rule of statutory interpretation is that words in a list should be interpreted as being of the same kind: *Department of Health (Re)*, 2022 NUIPC 6 (CanLII) at paragraph 41; *Nunavut Court of Justice (Re)*, 2022 NUIPC 3 (CanLII) at paragraph 28. Lawyers call this rule “the *ejusdem generis* rule”.

**[42]** In this case, the word “Minister” is followed by “the Director, an assistant Director, a Child Protection Worker or an authorized person...”. The other items in the list are all specific positions with the duties and obligations permitted by the CFSA. The word “Minister”, then, should be interpreted to mean a specific person. If it were interpreted to include every Family Services employee in an “appropriate capacity”, the rest of the list would be redundant because the word “Minister” would include every position that came after it.

### *“The Director”*

**[43]** The key position in the CFSA is the Director of Child and Family Services. The whole scheme of the Act flows from the statutory powers and responsibilities given to the person holding that title. There is only one person, appointed by the Minister under section 51(1), who can be the Director of Child and Family Services.

**[44]** The Director position was renamed in the 2023 reorganization, and was renamed again and split in the 2025 reorganization:

- a. The new Director of Family Wellness for Statutory and Strategic Initiatives is removed from the day-to-day handling of child-protection files. It is essentially a policy and review position. This position is no longer in a reporting relationship with the CSSWs. There are still a few positions reporting to this Director, at least some of whom would be handling child-protection files.
- b. The new Director of Family Wellness for Service Delivery does have a reporting relationship with CSSWs, through supervisors and regional managers. At the time of writing, this position appears to be vacant.

**[45]** But which of these director positions is “the Director of Child and Family Services” under the CFSA? It is not clear, although it appears to be the former. Whichever it is, one of them is no longer in a reporting relationship with some staff members who are handling child-protection files. That means some employees who are exercising delegated authority from the Director of Child and Family Services no longer have an accountability relationship with the Director.

### *“An assistant Director”*

**[46]** Section 53(1) of the CFSA provides for the appointment by the Director of Child and Family Services of assistant Directors “for one or more communities”.

**[47]** It does not appear that any assistant Directors have been appointed as such. In Family Services’ new structure, the closest analogy in terms of function

would be the regional managers on the service delivery side. The regional managers are not, however, appointed by the Director.

*“A Child Protection Worker”*

**[48]** Section 54(2) of the CFSA provides for the appointment by the Director of Child and Family Services of Child Protection Workers.

**[49]** Family Services has changed the name of the Child Protection Worker position. They are now called Community Social Services Workers (CSSWs).

**[50]** If there is a one-to-one correlation between Child Protection Workers (the old name) and CSSWs (the new name), the confidentiality risk is minimal.

*“An authorized person”*

**[51]** Section 55(1) of the CFSA provides for the Director of Child and Family Services to authorize a person to have the powers and duties of an “authorized person” under the Act.

**[52]** An “authorized person” under the CFSA has a narrow statutory role. It is essentially a way for the Director to clothe someone with authority under the Act to deal with child-protection situations when nobody else in a position of authority is available. The role of an “authorized person” is not relevant to anything under discussion in this review.

*Assistant deputy minister*

**[53]** The RCYO complaint on which this review is grounded is about the role of the ADM Family Wellness. Now that I have been through each person in the section 71(2)(f) list, I pause to state the obvious: the ADM is not in the list. Nor, in my view, can the ADM shelter under anyone else in the list.

*Conclusion on sections 71 and 72 of the CFSA*

**[54]** I conclude that there is currently a misalignment between the words of the CFSA and the way Family Services has organized itself. The ADM Family Wellness

may have access to the personal information in child-protection files even though they are not listed in section 71(2)(f) of the CFSA.

**[55]** This review is not based on the handling of a specific file, so I cannot say for certain that there has been an actual breach of privacy. My finding, rather, is that Family Services has structured itself in such a way that breaches of privacy are inevitable. A confidentiality problem is now baked into the system.

**[56]** The RCYO complaint, and this review, are focused on the ADM Family Wellness. Especially in light of the most recent Family Services reorganization, it is likely that my analysis also applies to other Family Services employees. It is difficult to say for sure since the 2025 reorganization is still a work in progress and changes are being made even as this decision is being written.

**[57]** I am certain the changes implemented by Family Services are well-intentioned. There is a crisis in child-protection in Nunavut and urgent action is required to set things right. The problem is that each change in names, responsibilities and accountabilities is a departure from the words of the CFSA. The cumulative effect of the changes is it becomes harder and harder, and eventually impossible, to know whether a given Family Services employee is authorized by the CFSA to see the personal information in a child-protection file.

**[58]** The tight confidentiality rules in the CFSA are a deliberate choice by the Legislative Assembly and must be respected. No matter how well-intentioned, Family Services cannot make up its own rules about who can have access to the personal information in child-protection files.

### *Remedy*

**[59]** There is a misalignment between the CFSA and the way Family Services is organized. The remedy is to re-establish alignment. That can be done in two ways:

- a. Amend the CFSA to more clearly reflect the new positions and accountability structure.
- b. Change the new positions and accountability structure to more clearly reflect the CFSA.

**[60]** As Information and Privacy Commissioner, it is not my business to recommend to the Minister which option is best. It is for others to judge whether Family Services' recent reforms are good, bad, or neutral. All I can say is that the reforms have resulted in a misalignment between law and structure, and the misalignment means that there is no assurance that personal information in child-protection files is being held as tightly as the law requires.

**[61]** I am aware that my conclusion may seem theoretical and the analysis may seem legalistic. But the question of who is looking at child-protection files really matters. The apprehension of a child is one of the most intrusive actions a government can take. Conversely, the harm to a child who is not adequately protected can be devastating. When the stakes are so high, it is essential that everyone involved – children, their families, Family Services staff, RCYO, lawyers, judges – know exactly who was involved in a file and who made the decisions.

## **Conclusion**

**[62]** The ADM Family Wellness is not included in section 71(2)(f) of the *Child and Family Services Act*, or any other part of section 71.

**[63]** Because the ADM Family Wellness is not included in section 71, the disclosure of personal information in child-protection files to the ADM is not an authorized disclosure under section 48(u) of the *Access to Information and Protection of Privacy Act* or any other part of section 48.

**[64]** This conclusion applies to any other employee not listed in section 71(2)(f).

## **Recommendations**

**[65]** I **recommend** that Family Services take the necessary steps to re-establish alignment between its structure and section 71(2)(f) of the *Child and Family Services Act*. (see paragraph 58)

Graham Steele

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