

Issues

[4] The issue in this review is: Was there an unauthorized disclosure of the Complainant's personal information?

Facts

[5] The Complainant (EMP1) was an employee of a company contracted by the GN Department of Health to provide health-care services at a facility owned and operated by the GN. I will not be more specific in order not to identify the Complainant's community and workplace. Health accepts that the ATIPPA applies to this workplace, even though the employees are not directly employed by the GN. The workplace is not unionized.

[6] In June 2024, the Complainant was asked to attend a meeting with the facility's manager, who I will refer to as MGR1. The Complainant was not working that day, and so went to the facility to attend the meeting. The Complainant did not know the purpose of the meeting, but thought it might be some sort of performance review.

[7] When the Complainant entered the room where the meeting was to be held, there were four other people working there: MGR1, a supervisor (MGR2), and two employees (EMP2 and EMP3). MGR2 and EMP3 then left the room. MGR1 stayed, which the Complainant expected. To the Complainant's surprise, EMP2 also stayed. The Complainant had not been told that EMP2 would be attending the meeting.

[8] The purpose of the meeting, as it turned out, was to terminate the Complainant's employment.

[9] On June 24, the Complainant filed a privacy breach complaint with my office. The essence of the complaint is that EMP2's presence in the room during the termination meeting was an unauthorized disclosure of the Complainant's personal information to EMP2.

[10] In accordance with my usual practice, I asked Health to undertake the initial investigation. They did so, and on July 15 submitted a privacy breach report (PBR) to me. Health concluded that there was no privacy breach.

[11] After further discussion with the Complainant, I undertook my own investigation to supplement the work that had been done by Health. This Review Report is the result.

[12] During my investigation, I met with the Complainant, MGR1 and EMP2. I thank them all for their cooperation.

Law

[13] Part 2 of the ATIPPA deals with the protection of privacy, and specifically with the collection, use, and disclosure of personal information.

Personal information

[14] “Personal information” is defined in section 2 of the ATIPPA to mean “information about an identifiable individual”. The reasons for an employee’s termination, and related information such as the terms of an employee’s termination, is personal information.

Unauthorized disclosure

[15] 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

...

(b) in accordance with this Division.

The phrase “this Division” covers sections 48, 48.1, and 49.

[16] The portion of “this Division” that is most relevant is section 48(g), which reads as follows:

48. A public body may disclose personal information

...

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

Analysis

[17] The Complainant understands that it is not my role to review the human-resources practices of Health or its contractors. My role is to assess whether the Complainant’s privacy was breached. In this case, that is a small sliver of the larger human-resources issue.

[18] I have written before that the ATIPPA is frequently being used as a proxy battleground for human-resources issues: see *Department of Education (Re)*, 2022 NUIPC 20 (CanLII) at paragraph 18 and the cases cited there. This use is problematic because the ATIPPA is almost always too blunt an instrument for dealing with the nuances of the workplace: *Department of Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13 (CanLII). This case is another example.

[19] It is not usually desirable for this office to insert itself into matters that are, at heart, HR issues, just because a sliver of the situation may be characterized as a privacy issue: *Department of Education (Re)*, 2022 NUIPC 20 (CanLII) at paragraph 23. The difference between that case and this one, however, is that the facility’s workforce is not unionized and the Complainant does not have a better forum for the privacy issue to be aired. That is why I undertook my own investigation after Health had completed theirs.

[20] The Complainant agrees that it was appropriate for MGR1 to have a third person (a witness) in the termination meeting. I also agree. The presence of a witness at a termination meeting is in keeping with HR best practices.

[21] The narrow question before me, then, is whether the choice of witness represented a breach of the Complainant's privacy.

[22] The Complainant says EMP2's presence was a privacy breach because:

- a. They were not told in advance that anyone else would be attending the meeting.
- b. They did not consent to EMP2's presence in the meeting.
- c. EMP2's presence inhibited their ability to respond to what MGR1 was saying. The Complainant did not consider EMP2 to be "neutral".
- d. If a witness was needed, other suitable people (MGR2 and EMP3) were available. Although EMP3 was a new employee, the Complainant considered EMP3 to be "neutral".

[23] MGR1 explains their choice of witness as follows:

- a. It might have been possible to have a witness from the contractor's head office join the meeting on-line, but MGR1 wanted the witness to be in the room during the meeting.
- b. MGR1 wanted the witness to be of the opposite gender from himself (MGR1 and MGR2 are male; the Complainant is female).
- c. EMP2 was in training to take over from MGR2, who would be leaving the facility in about a month.

[24] The Complainant says the third reason is not true, but I find they are mistaken. The Complainant was not aware, at the time of the termination meeting, that MGR2 was planning to leave and that EMP2 had been tapped to replace MGR2. (I note that, in the time since the termination meeting, MGR2 has in fact left the facility and EMP2 has assumed MGR2's position.)

[25] MGR1’s reasons for choosing EMP2 as the witness are, in my view, reasonable and in keeping with HR best practices. The choice of EMP2 as a witness was made in good faith. MGR1 was not required – whether under the ATIPPA or otherwise – to obtain the Complainant’s consent to have EMP2 attend the meeting.

[26] In all the circumstances, I find that any disclosure of the Complainant’s personal information during the meeting was authorized under section 48(g) of the ATIPPA. It was “for the purpose of hiring, managing or administering personnel”.

Conclusion

[27] There was no unauthorized disclosure of the Complainant’s personal information during the termination meeting.

Recommendations

[28] Given my conclusion, I make no recommendations to the Department of Health.

Graham Steele

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