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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**

<b>Report Number:</b>	24-285-RR
<b>CanLII Citation:</b>	Department of Family Services (Re), 2025 NUIPC 4
<b>NUIPC File Number:</b>	25-116
<b>GN File Number:</b>	1029-30-2425FS0441
<b>Date:</b>	March 31, 2025

**Summary**

**[1]** The Representative for Children and Youth filed a privacy breach complaint. The RCYO alleged the Department of Family Services’ reporting structure results in unauthorized disclosure of personal information in child-protection files. DFS submitted that the Information and Privacy Commissioner does not have jurisdiction over the subject-matter of the complaint, since the alleged breach was of the *Child and Family Services Act* and not the *Access to Information and Protection of Privacy Act*. The Commissioner finds he does have jurisdiction.

**Nature of Review and Jurisdiction**

**[2]** This is a decision about jurisdiction on a privacy file. The complaint was filed by the Representative for Children and Youth under section 49.1(1) of the *Access to Information and Protection of Privacy Act* (ATIPPA).

**[3]** I have jurisdiction over the Department of Family Services: ATIPPA, section 2, definition of “public body”. DFS questions whether I have jurisdiction over the subject-matter of the complaint.

## Issues

[4] The only issue in this review is whether I have jurisdiction over the subject-matter of the RCYO complaint.

## Facts

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

[6] 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.

[7] On March 6, 2025, I received a letter from the RCYO outlining a privacy breach complaint against DFS. The essence of the complaint is described as follows:

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 DFS organizes itself for child-protection purposes, and quotes section 71 of the *Child and Family Services Act* (confidentiality). I had some further correspondence with the RCYO about the background to the complaint.

[8] On March 12, I notified the deputy minister of DFS of the privacy breach complaint, in accordance with section 49.1(3) of the ATIPPA.

[9] Later the same day, I received a letter from the deputy minister, raising the issue of my jurisdiction:

As with any other Department, [DFS] is bound by, and makes every effort to comply with, the *Access to Information and Protection of Privacy* (“ATIPP”) Act. The Department’s structure and reporting relationships do not, in my opinion, contravene the ATIPP Act, and it is not clear to me that Ms. Bates has alleged a contravention of the ATIPP Act in any case. Rather, she alleges a contravention of section 71 of the Child and Family Services Act (“CFS Act”).

While we vigorously dispute Ms. Bates allegation that the Department’s reporting structure contravenes the CFS Act, we do not think that this dispute falls within the jurisdiction of the IPC.

Accordingly, we respectfully submit that a review under s. 49.2(1) is not warranted in the circumstance.

**[10]** I gave the RCYO an opportunity to make a submission on the issue of jurisdiction, but they declined to do so.

## **Law**

**[11]** I have jurisdiction over the public bodies and subject-matter outlined in the ATIPPA. In the present case, there is no question that I have jurisdiction over the Department of Family Services. The issue is subject-matter jurisdiction.

## *ATIPPA*

**[12]** Section 49.1 of the ATIPPA gives me authority to review two types of privacy matters:

- a. Under section 49.1(1), I have authority to review an individual’s complaint that a public body “has collected, used or disclosed the individual’s personal information in contravention of this Act”.
- b. Under section 49.1(2), I have authority to review “the practices of a public body with respect to the collection, use and disclosure of personal information” if I have “reason to believe that a public body has or may have collected, used or disclosed personal information in contravention of this Act”.

**[13]** The rules about collection, use and disclosure of personal information are in Part 2 of the ATIPPA, in Divisions A, B and C, respectively. In the present case, the issue raised by the RCYO complaint is about disclosure of personal information, so it falls under Part 2, Division C, and in particular section 48.

**[14]** Section 48 of the ATIPPA is a lengthy list of circumstances in which a public body may disclose personal information. The potentially relevant provisions are as follows:

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;

...

(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;

...

(q) when necessary to protect the mental or physical health or safety of any individual; [or]

...

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

**[15]** Section 48.1 contains guidance on how to interpret the phrase “a use consistent with that purpose” in section 48(a):

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.

**[16]** If the situation raised in the RCYO complaint does not fall somewhere in the list in section 48, then disclosure of personal information is not allowed.

*Child and Family Services Act*

**[17]** The *Child and Family Services Act* contains, in section 71, its own code of confidentiality. The relevant parts read as follows:

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;

....

(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;

...

- (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;

...

- (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; [or]

...

- (k) where it is required for the purposes of this Act.

**[18]** In *Department of Family Services (Re)*, 2023 NUIPC 15 (CanLII), I concluded that I do not have jurisdiction to review DFS's refusal to disclose child-protection records if the refusal is based on section 71 of the CFSA.

## Analysis

**[19]** The RCYO letter of March 6 is not a privacy breach complaint under section 49.1(1) of the ATIPPA. That sort of complaint is restricted to individuals who are alleging that a public body has contravened the ATIPPA with respect to that individual's own personal information.

**[20]** Under section 49.1(2) of the ATIPPA, however, I may review any matter that comes to my attention about a possible contravention of the Act. The RCYO, which has been given an advocacy role by the Legislative Assembly, has brought to my attention their concern about DFS's reporting structure and whether it complies with Nunavut privacy law.

**[21]** DFS has taken the position that I do not have jurisdiction over the subject-matter of the complaint because the RCYO alleges a contravention of section 71 of the CFSA, rather than a contravention of the ATIPPA.

**[22]** There have been a handful of previous ATIPPA cases in Nunavut about the relationship between section 71 of the CFSA and the ATIPPA: *Department of Family Services (Re)*, 2023 NUIPC 15 (CanLII); *Review Report 07-34 (Re)*, 2007 NUIPC 10 (CanLII); *Review Report 07-35 (Re)*, 2007 NUIPC 11 (CanLII); see also *Yellowknife Health and Social Services Board (Re)*, 2000 CanLII 26935 (NWT IPC), from the Northwest Territories. In the first of the listed cases, I found that I did not have jurisdiction to review a refusal to disclose under section 71 of the CFSA.

**[23]** The present case is, in my view, distinctly different from the previous cases. All previous cases were about access to information under Part 1 of the ATIPPA – i.e. somebody outside DFS wanted disclosure of records and DFS refused disclosure. The present case is a privacy case under Part 2 of the ATIPPA. It is not clear that section 71(2) of the CFSA applies at all to a privacy case. Even if it does, it is not necessarily in conflict with the ATIPPA.

**[24]** Interpretation of the ATIPPA will sometimes involve interpretation of other statutes. This is most obvious in section 48(u), quoted in the Law section above, which permits disclosure “for any purpose in accordance with any Act that authorizes or requires the disclosure”. But the same is also true of disclosures

under sections 48(a) and 48(k), also quoted in the Law section above, both of which require me to develop an understanding of what the public body's governing statute (in this case, the CFSA) permits or forbids.

**[25]** In short: The fact that I may have to interpret section 71 of the CFSA does not take the subject-matter out of my jurisdiction under Part 2 of the ATIPPA. I would still be acting in accordance with my authority under the ATIPPA.

### **Conclusion**

**[26]** I have jurisdiction, under section 49.1(2) of the ATIPPA, over the subject-matter of the RCYO complaint. This conclusion does not imply, of course, any finding on my part that the complaint is well-founded. That remains to be decided.

### **Recommendation**

**[27]** Because this is a jurisdictional decision, I make no recommendation. I will simply proceed with my review. The Minister of Family Services is not required to issue a written decision under section 49.6 of the ATIPPA.

Graham Steele

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