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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 Human Resources wrote an email to a GN employee on unpaid leave, asking if they were working for another employer. The stated purpose was “updating your file”. The employee filed a privacy breach complaint alleging that this attempted collection of personal information was done under false pretenses. The Commissioner finds that the email did not comply with section 41(2) of the ATIPP Act. When it is collecting personal information, a public body must explain itself openly and plainly. In this case, the stated purpose was essentially meaningless. The Commissioner recommends HR review its policies and procedures to ensure they comply with section 41(2).

Nature of Review and Jurisdiction

[2] This is a review of a privacy breach complaint. The request for review 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 Human Resources: ATIPPA, section 2, definition of “public body”.

Issues

[4] The issues in this review are:

a. Did the January 13 email comply with section 41(2)?
b. If not, what is the appropriate remedy?

Facts

[5] The Complainant is a former GN employee who was on an extended unpaid leave. The Department of Human Resources was assisting the Complainant's home department with managing various aspects of the file. That is common with complex HR cases, which this one was.

[6] On January 13, 2025, an HR employee wrote an email to the Complainant. The exact wording of the email is integral to the complaint:

> I hope this email finds you well. I am reaching out as we are updating your file. Can you please tell me if you are working for another employer (start date and name of employer)?

[7] The Complainant declined to answer the question. Eventually, HR found an online reference to what appeared to be the Complainant's new employment, and made certain decisions based on that information.

[8] Later, the Complainant filed an access request under the ATIPPA for records related to their GN employment. After reviewing the records, the Complainant contacted me to file a privacy breach complaint. The Complainant alleges that the January 13 email from HR was an attempt to collect personal information under false pretenses and thus a breach of the Complainant's privacy.

Law

[9] Part 2 of the ATIPPA lays down rules about how public bodies collect, use and disclose personal information. The present case is about the collection of personal information. The most relevant provisions are sections 40 and 41.

[10] Section 40 is about why personal information can be collected. The relevant parts read as follows:

40. No personal information may be collected by or for a public body unless

(a) the collection of the information is expressly authorized by an enactment; [or]

…

(c) the information relates directly to and is necessary for

(i) an existing program or activity of the public body, ….

[11] Section 41 is about <u>how</u> personal information can be collected. The relevant parts of section 41(1) read as follows:

41. (1) A public body must, where reasonably possible, collect personal information directly from the individual the information relates to unless

(a) another method of collection is authorized by that individual or by an enactment;

…

(g) the information

(i) is necessary in order to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Nunavut or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or

(ii) is necessary in order to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Nunavut or a public body and is collected for that purpose; [or]

…

(j) the information is collected for the purpose of hiring, managing or administering personnel of the Government of Nunavut or a public body.

[12] Section 41(2) is the provision on which this case turns:

(2) A public body that collects personal information directly from the individual the information is about shall inform the individual of

(a) the purpose for which the information is collected,

(b) the specific legal authority for the collection, and

(c) the title, business address and business telephone number of an officer or employee of the public body who can answer questions about the collection,

> unless the regulations provide that this subsection does not apply to that type of information.

I note in passing that no regulation has been made under section 73(h) of the ATIPPA to exempt any information or category of information from the application of section 41(2).

[13] There is no Nunavut precedent we can look to for guidance. The only reference I could find to section 41(2) is in *Review Report 14-074 (Re)*, 2014 NUIPC 4 (CanLII). The reference is brief. There is no substantive discussion of what section 41(2) requires.

Analysis

[14] I have written previously that the ATIPPA has become a proxy battleground for the GN's labour relations. This case is another example. The Complainant had a multifaceted employment dispute with the GN. It is not my business to say who is right or wrong. The privacy breach complaint, which comes down to the contents of a one-sentence email, is a very thin sliver of that overall dispute.

[15] The Complainant and the GN had reached an impasse on whether the Complainant could resume working for the GN. The Complainant said they could not, for medical reasons, return to Nunavut for work. The GN was not willing to offer permanent out-of-territory work. Those two positions are incompatible.

[16] The Complainant was becoming frustrated with HR's insistence on certain return-to-work paperwork being done, because it was creating expense and inconvenience for the Complainant and it was not clear what purpose the paperwork served.

[17] It was in this context that the email of January 13 was sent by an HR employee to the Complainant. On the surface it is an innocent request for information.

[18] Later, when the Complainant received an ATIPP disclosure package from HR, they were able to see the discussion that had gone on within HR before the January 13 email was sent. The sender of the email asked their supervisor for

advice on whether the request could be made at all, and how to word the request. The supervisor's advice said that it was okay to make the request, and suggested using the phrase "updating the file". The sender took that advice.

[19] In its written submission to me, HR says this phrase was meant to be "neutral and professional", given the tension in the relationship. To the Complainant, the email was an attempt to elicit information that HR wanted to use against him.

[20] On this point, I agree with the Complainant. The discussion within HR was focused primarily on whether the Complainant would be terminated on a medical or a non-medical basis. (There is a significant difference between the two. Medical termination comes with severance and continuation of benefits. Non-medical termination comes with neither.) The information sought by HR was going to be used primarily to decide that question – and in fact, after HR obtained the information from another source, that is exactly how it was used.

[21] Did the Complainant have a legal obligation to give the information to their employer anyway? HR says yes, the Complainant says no. In my view, the question is outside my jurisdiction. I am not an employment tribunal, and I do not want to turn myself into one. More importantly, I do not need to answer that question to decide the privacy issue.

[22] What I can say is that the question of the Complainant's current employment was relevant to at least some points of dispute between the Complainant and the GN. I conclude therefore that there was no privacy breach in the question itself. It was an attempt by HR to collect relevant personal information, and it was authorized under section 40(c)(i) of the ATIPPA.

[23] The core privacy issue in this case, then, is how HR went about asking the question. The standard is in section 41(2), which I repeat here:

> (2) A public body that collects personal information directly from the individual the information is about shall inform the individual of
>
> (a) the purpose for which the information is collected,
>
> (b) the specific legal authority for the collection, and

> (c) the title, business address and business telephone number of an officer or employee of the public body who can answer questions about the collection,
>
> unless the regulations provide that this subsection does not apply to that type of information.

In my view, the email of January 13 did not comply with section 41(2) of the ATIPPA. Neither in the email of January 13, nor in any of the surrounding correspondence, did HR explain the (true) purpose for which the information was being collected, nor the specific legal authority for the collection.

[24] Section 41(2) does not get the attention it deserves. In my five-year term as Commissioner, this is the first time it has come up. It is a healthy reminder to public bodies that they need to explain what they are doing. If they cannot produce the legal authority, or if they find themselves shading or hiding their real purpose, they should probably re-think what they are doing.

[25] Although section 41(2) does not say so in so many words, there is an implication that a public body must explain itself openly and plainly to the person whose personal information is being requested. This implication is partly embodied in paragraph (c), which requires that a contact person be available to answer questions about the collection, but it is embodied in the whole scheme of Part 2 of the ATIPPA. The onus is on the public body to explain what it is collecting and how it will be used.

[26] In my view, HR did not explain itself openly and plainly to the Complainant. The stated purpose of "updating your file" was essentially meaningless, since that phrase is vague enough to cover just about any collection of personal information. HR says it wanted to keep the tone "neutral and professional" so as not to provoke the Complainant, given the tension in the relationship. That is an understandable goal, but it cannot override the requirements of section 41(2).

[27] I can see, from reviewing the entirety of the internal correspondence, that HR staff were unsure of the legal ground they stood on. They did not know initially if they could even ask the Complainant the question. They did not know if the Complainant was obliged to answer, or what to do if the Complainant refused

to answer. Their uncertainty is what led them to attempt to collect personal information in a way that was not in keeping with section 41(2).

Remedy

[28] The Complainant raised a concern about a communication from HR. I have found the concern is valid. What should we do about it?

[29] As noted above, this issue is a thin sliver of the overall dispute between the Complainant and the GN. The broader dispute, if the Complainant wishes to continue with it, must be resolved in another forum. This case has, at least, brought to HR's attention that section 41(2) exists and imposes certain requirements whenever personal information is being collected. That is a positive outcome.

[30] I do not want to be too prescriptive about what HR should do next. There are too many possible scenarios when an employer is as large and varied as the GN. The important thing is that HR review its policies and procedures to ensure they comply with section 41(2). Staff need to be aware that section 41(2) exists, and managers need to be ready to remind and advise staff about how to meet the section 41(2) standard.

Conclusion

[31] The January 13 email did not comply with section 41(2) of the ATIPPA.

Recommendations

[32] **I recommend** that HR review its policies and procedures on the collection of personal information to ensure they comply with section 41(2).

[33] **I recommend** that HR circulate a memo to all HR staff who may collect personal information, and their managers, informing them of this Review Report and the standards set by section 41(2).

Graham Steele
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