

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER
Review Report 13-122**

File: 13-153-4
December 5, 2013

On July 31st, I received a complaint from an individual with respect to what he considered to be an unauthorized collection of his personal information by the Department of Health and Social Services. The Complainant was applying for a renewal of his NWT Health Care Coverage. He received in the mail a letter from Health and Social Services indicating that he needed to complete “Section B” of the application form. This section asks, among other things, the following questions:

- a) Are you employed?
- b) Employer’s name.
- c) Employer’s Telephone.
- d) Are you eligible for benefits under your Employer’s or another 3rd party insurance plan?
- e) If “yes” specify name of plan and insurance details.

This information was requested for both the Complainant and his spouse.

The Complainant’s letter to me asked that I review the questions being asked “with a view to making a ruling on the government’s need to know where or indeed, if, my spouse or I work”. He felt that this information was not necessary to determine his eligibility for services under the NWT’s health care program.

THE PUBLIC BODY’S RESPONSE

The Department of Health and Social Services provided a detailed explanation. They point out that the Health Care Card Renewal Form contains two parts. The first part, Section “A”, must be completed by everyone seeking to renew their health care card.

This section does not require the applicant to provide any employment information. The information in this part of the form is collected because every person must meet the definition of “resident” to be eligible for health care. The information must, therefore, be collected in order to assess eligibility.

Section “B” of the Health Care Card Renewal Form, which is the part of the form that the Complainant takes objection to, only needs to be filled out if an applicant is enrolled in one of several programs that provide additional benefits (such as prescription drugs, medical equipment and supplies, and dental services). These are known as the Extended Health Benefit (EHB) Programs. There are three such programs - EHB Specified Diseases, EHB Seniors and the Metis Health Benefits Program.

In this case, the public body says that the Complainant was asked to provide information about his and his spouse’s employment to update the information he had provided when he initially applied for the EHB Seniors program. They say the information is required as a change in employment status or a change of employer may affect the level of coverage received through the Health Care program. If an individual is working with a company that provides health benefits, the EHB Program may not cover costs to the same level as for someone with no such health benefits. On the other hand, if the individual was still employed when he/she became eligible for and applied for EHB benefits as a senior, but has since retired, the level of coverage might need to be adjusted upward.

The public body did recognize that the form letter that is sent out in these circumstances may not be entirely clear or properly outline the purposes for which the information was being requested and they undertook to address that issue internally.

THE RELEVANT SECTIONS OF THE ACT

Section 40 of the *Access to Information and Protection of Privacy Act* provides that:

- (a) No personal information may be collected by or for a public body unless the collection of the information is expressly authorized by an enactment;
- (b) the information is collected for the purposes of law enforcement; or
- (c) the information relates directly to and is necessary for
 - (i) an existing program or activity of the public body, or
 - (ii) a proposed program or activity where collection of the information has been authorized by the head with the approval of the Executive Council.

In this case, the public body relies on subsection 40(1) (c)(i). I am satisfied, based on the explanation given, that the public body has a legitimate reason for needing to know whether or not applicants for EHB programs have additional health care coverage from another source. However, I am not 100% convinced that the public body needs to know about the Applicant's employment status for this purpose. It might be that the easiest way to get to the required information is to ask about employment because the name of the employer will often also reveal what, if any, additional coverage is available from that source. If, for example, the employer is the Government of the Northwest Territories, the Department of Health will know, without more, what the extent of the employment health benefits are. However, not all employers will have the same coverage and the Department is not likely to have detailed knowledge of every health benefits package in the private sector. The form does ask whether the applicant is eligible for benefits under "your Employer's or another 3rd party insurance plan". It seems to me that this may be sufficient for the purposes outlined by the public body.

The Department does not really need to know if the individual is employed - it only needs to know if there is another health care plan in play for the individual. The *Access to Information and Protection of Privacy Act* allows public bodies only to collect that information they need for the provision of a services. It seems to me that if the department has the name of the insurance company and the plan number, that should be all they need for the purposes outlined in their explanation. I would therefore recommend that the public body cease collecting information about the employment status of individuals applying for access to EHB programs. The necessary information can be obtained without asking that question.

I note, as well, that section 40(2) of the *Act* puts a positive obligation on public bodies to advise individuals why information is being collected and how it will be used.

Subsection 40(2) reads as follows:

- (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 this case, the cover letter that accompanied the request that Section B be completed did not provide any explanation at all about the purpose for which the section "B" information was being requested, let alone any explanation as to how the information would be used or disclosed. This letter must be revised to provide specific information about what is being collected (both in Part A and Part B), why it is being collected and what it will be used for. In addition, as per section 40(2) of the

act, the letter should include the title, business address and telephone number of the officer or employee of the public body who can answer any questions the public might have about the collection of the information in question. This direction would apply not only to the letter that goes to those who are or may be eligible for EHB benefits, but any time that the department is seeking personal information from the public for any purpose.

RECOMMENDATIONS

I am not convinced that the Department of Health and Social Services requires information about an individual's state of employment to determine the benefits that they might be entitled to under any of the EHB programs. What they need to know is whether the individual (or the spouse of the individual) has any third party insurance available to them. It may be that the name of the insurance company would be required, and perhaps a contact number for the insurance company, as well as details about the policy (i.e. - a policy number, or a Group policy number). Unless there is some reason that the name of the employer is directly necessary for the purpose of administering EHB benefits, however, there is no reason to collect that information and I recommend that the public body amend their forms and their practices accordingly. Furthermore, I would recommend that the public body review its form letters to ensure that they properly describe the reason the information is being collected and how it will be used, as well as to include the necessary information which would allow the public to call and request clarification in this regard.

Elaine Keenan Bengts
Information and Privacy Commissioner