

**NORTHWEST TERRITORIES  
INFORMATION AND PRIVACY COMMISSIONER  
Review Report 19-205  
Citation: 2019 NTIPC 22**

File: 18-194-4  
October 15, 2019

**Background**

The Applicant made a request for records from the Yellowknife Housing Authority. He requested a copy of the information the Authority receives each year from the Canada Revenue Agency (CRA) in order to calculate his rent in accordance with the established criteria. The NWT Housing Corporation, which collects income information on behalf of the Yellowknife Housing Authority, refused to provide this information on the basis that they have a Memorandum of Understanding with the CRA which they say prevents them from disclosing this information. The Applicant sought a review of the Respondent's refusal to provide the information.

**Issue**

The sole issue here is whether the Memorandum of Understanding between the CRA and the NWT Housing Corporation prohibits the disclosure of the information requested.

**Relevant Sections of the Act**

The following are the relevant sections of ATIPPA:

1. The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
  - (a) giving the public a right of access to records held by public bodies;

- (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves held by public bodies;
  
- 5.(1) A person who makes a request under section 6 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.
  
- 7. (1) The head of a public body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.
  
- (2) The head of a public body shall create a record for an applicant where
  - (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and
  - (b) creating the record would not unreasonably interfere with the operations of the public body

## **Discussion / Recommendations**

The Yellowknife Housing Authority is an organization established under the NWT Housing Corporation Act. As part of its mandate it manages public housing in Yellowknife on behalf of the NWT Housing Corporation. The NWT Housing Corporation provides income-based assistance to residents, and for that reason collects income information from its tenants on an annual or more frequent basis in order to calculate the appropriate rental rate to be applied to each tenant. Several years ago, in an attempt to streamline the information collection process and make it more privacy protective, the NWT Housing Corporation entered into a Memorandum of Agreement with the CRA. Under the terms of this agreement, with the written consent of the tenant, the CRA will electronically transfer relevant income information for each tenant to the NWT Housing Corporation's system. Based on that information, and using other

relevant information inputted locally, the system does the necessary calculations and sets the appropriate rent for each tenant in accordance with the set criteria, without anyone from the NWT Housing Corporation or the Yellowknife Housing Authority having access to the CRA income information. This is a huge improvement in terms of both efficiency and privacy protection. Because the calculation is done by the system, no one in the Housing Corporation has a need to see the information about each individual provided by the CRA.

As noted above, the Housing Corporation receives information from the CRA under the terms of a Memorandum of Understanding (MOU) with them. The Housing Corporation is of the opinion that section 5.2 of the MOU prevents them from releasing the information received from the CRA to the Applicant.

Section 5.2 states:

- 5.2 The CRA may approve the release of taxpayer information in Annex B of this MOU upon the express understanding that:
- (a) requests for information shall be made by NWT Housing Corporation officials identified in Annex D, and the CRA officials identified in Annex D shall authorize such releases of information;
  - (b) the information will be used solely for the purpose of administering the specific program(s) enacted under the provincial act, as identified in Annex D shall authorize such releases of information;
  - (c) requests for information shall include the information identified in Annex B.

I disagree with the Housing Corporation's interpretation of the MOU. Section 5.3 of the MOU provides that the NWT Housing Corporation "shall not disclose taxpayer information to a third party without written consent from the CRA". The term "third party"

is not defined in the MOU. In my opinion, when an individual is asking for his/her own personal information, that individual is not a third party - he/she is the owner of the information. The confidentiality provisions of the MOU are there to protect the privacy of the individual the information is about, not to protect the CRA. These provisions prevent the Housing Corporation from disclosing the information to anyone other than the individual the information is about (a third party). The consent form signed by tenants entering the program has the following statement:

The information released [by the CRA] will be relevant to and used solely for the purpose of determining and verifying entitlements to [the relevant program], and will not be disclosed to any other person or organization without my approval.

This implies that, if the tenant provides his/her approval to release his own personal information to him/herself, the information can be so disclosed.

Even if I am wrong in this analysis, section 5.2 of the Memorandum of Understanding sets out circumstances in which the information received from CRA can be disclosed - specifically, by means of a request to disclose the information made to the CRA. Presumably, therefore, if the Housing Authority had made a request to the CRA to allow them to disclose the information to the Applicant, with the Applicant's consent, that approval would have been granted. Section 7 of the *Access to Information and Protection of Privacy Act* imposes on public bodies a positive duty to assist Applicants. In this case, that would include making the appropriate inquiry to the CRA.

Moreover, regardless of what the MOU states, the MOU itself is subject to the provisions of ATIPPA. Section 1 of ATIPPA sets out that one of the purposes of the Act is to give persons a right of access to personal information about themselves held by public bodies. Here the Applicant is doing just that - he has requested to know what information about himself the Yellowknife Housing Authority receives from the CRA and is using to set his rent every year.

Furthermore, section 5 of ATIPPA states that a person who makes a request for information has a right of access to any record in the custody or control of the public body, so long as the information requested is not excepted from disclosure under Division B of Part 1 of ATIPPA. The Yellowknife Housing Authority did not claim that any of the Division B exceptions applied in this case and in my view none of them do, as the Applicant is requesting his own personal information.

In my view, the requested information is not excepted from disclosure by virtue of the MOU with the CRA and thus I **recommend** that the requested information be provided to the Applicant.

As a final note, in the information provided to me from the NWT Housing Corporation, they discussed how to provide the information to the Applicant as it is only received electronically and that only one or two employees have authority to access the information in the system. However, section 7 of the ATIPP Act requires the public body to create a record where the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise. Thus, even though the information is only received electronically, the Housing Corporation should be able to take a screen shot or provide some sort of print out to the Applicant with very little effort. The only time that this may be an issue is if the information within the Housing Corporation system is encrypted and unreadable with existing software within the system. There is, however, no indication that this is the case.

Elaine Kennan Bengts  
**Information and Privacy Commissioner**