

**NORTHWEST TERRITORIES  
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 12-109

12-136-4

August 5, 2012

**THE REQUEST FOR REVIEW**

The Complainant (who will be referred to herein as "A.B." for ease of reference) in this case is of the opinion that Yellowknife Health and Social Services Authority (YHSSA) and his personal physician have improperly disclosed his personal health information. A.B. is an employee of the Government of the Northwest Territories. He has a number of physical and psychological challenges. As a result, a recommendation had been made that the employer provide accommodations to allow A.B. to work more effectively. There was some disagreement between A.B. and his employer with respect to the kind of accommodations necessary. In order to resolve this impasse, A.B.'s physician suggested that a psychiatric assessment be done. A.B. says he was assured that information from the psychiatrist would not be shared with his employer. It is evident that everyone involved knew that A.B.'s relationship with his employer was difficult and that he had a significant distrust of the employer and of Human Resources. He had expressed his concerns a number of times about the lack of professionalism that he felt existed within the Department of Human Resources. Despite this, he says, and despite his specific instructions to his physician NOT to share the specifics of the psychiatric report with his employer, the physician sent the employer a letter about the assessment, to which was attached a full copy of the psychiatric report. A.B. says this was sent without first giving him the opportunity to see what was being sent and against his specific instructions to his physician.

**THE PUBLIC BODY'S RESPONSE**

There is no dispute from the physician about the fact that the psychiatric report was attached to a letter he prepared to send to the employer. He says, however, firstly that he had a signed consent from A.B. to disclose the information and secondly, that

neither he, nor anyone in his office actually sent the letter. The public body, in fact, suggests that A.B. picked up the letter from the clinic and delivered it himself, after he reviewed the contents of the letter in the clinic in the presence of clinic support staff.

The physician recalls that he discussed with A.B. how the report would be used or disclosed and his recollection is very different than A.B.'s memory of the conversation. The physician says that he specifically recalls that they reviewed the report together and agreed that the report provided the information that they both felt would support A.B.'s argument in terms of the accommodations required. He says he specifically recalls speaking to A.B. about the need to attach the consultation report to his letter as it was the evidence that would make A.B.'s argument with the employer. He recalls telling A.B. that the employer would be required to treat the information provided as confidential. He advises that he did not personally send the letter to the employer, but that this had been left to support staff in the clinic.

The public body also provided the recollection of a member of the clinic's support staff. One of them specifically recalled A.B. attending the clinic because he "wanted to pick up" the letter that the physician had prepared. This employee states that A.B. read the letter in front of her. According to her, A.B. asked what was meant by the words "consult attached" and that she identified the psychiatric report as the document attached to the letter and provided A.B. with a copy of the consultation report then and there. A.B. reviewed the consultation report and agreed, or at least did not object to, it being included with the letter. She says she had A.B. fill out a "Consent for Release of Information" form and that, after discussing the consultation report, A.B. added the words "& consult" to the form. She says that, from her perspective, it was clear that A.B. understood and was clearly aware of what was going to be included in the letter to the employer. A copy of the letter and report were provided to A.B. at that meeting. Furthermore, it was clear that A.B. was aware that these two documents were going to be sent to his employer, as per his own request. This member of the staff did not personally send the letter and its attachment to the employer and she did not know when, or if, the letter had actually been sent.

It is to be noted, as well, that YHSSA was able to produce a form entitled "GNWT Employee Request for Medical Prognosis" dated some months earlier (September, 2011) on which A.B. had signed his name directly under the following words:

I hereby authorize the health Practitioner to release the information to myself and/or the Government of the Northwest Territories.

That form, however, seems to be specific to the medical information contained in the form itself, which appears to be an evaluation of the patient's ability to perform certain physical tasks. There is no reference in this document to the psychiatric consultation report which is the subject of this review.

The Client Service Manager for the Department of Human Resources confirms that an envelope containing both the letter from the physician and the consultation report was received by her office on February 9, but could not confirm how the envelope was received (i.e. by mail or by hand). She further indicated that A.B. contacted her the same day, saying that he had just come from the clinic and wanted to know exactly what Human Resources had received. According to this employee, A.B. requested that the letter and the consultation report be destroyed. In the end, it appears that the letter and consultation report were returned to A. B.

Yellowknife Health and Social Services also made the following observations:

- there was no clear indication in their records that the letter was, in fact, ever sent to Human Resources by the clinic;
- the Consent for Release of Information used by YHSSA requires that an address be provided for the intended recipient but, in this case, no address had been provided, though it was clear from the discussions that it was to be provided to Human Resources

- YHSS officials do not hand deliver envelopes. Any mail is sent either by mail or courier;
- the record shows that Human Resources received the letter and attachment on February 9th, but the Consent for Release of Information was not scanned into A.B.'s chart until February 13th. Their protocol and procedures require that the consent be scanned onto the chart before it is acted upon. The disclosure request would not, therefore, have been processed before February 13th.

In light of all this, YHSSA concludes that the letter and attachment received by Human Resources did not come from them. They surmise that A.B. himself must have hand delivered it to the employer, then had second thoughts, and went back to recover it. But, even if it had been sent by YHSSA, they say it was sent with A.B.'s consent and full knowledge as to what was being sent.

## **THE COMPLAINANT'S RESPONSE**

A.B. was outraged by the public body's submissions. He denies that the physician ever reviewed the consultation report with him, as suggested by the physician. He denies vehemently that the physician told him that the psychiatric report would be attached to the letter being sent to Human Resources. To the contrary, he says that the physician had assured him that he would only refer to the report in his letter. In the words of the Applicant:

Bluntly, there is no way in hell I would have allowed anyone to read those comments, let alone an employer who I am engaged with in legal actions.

A.B. says that he only found out the contents of the letter sent to his employer after it had been sent by YHSSA and received by Human Resources. As proof of this, he notes that the doctor's letter is dated February 3<sup>rd</sup>, but his consent is dated only

February 9th . He denies that he authorized the information to be released directly to his employer. He says that the consent form he signed was for the release of the letter and consultation report to himself, not to his employer.

The Complainant is upset, as well, that Human Resources was involved in the public body's response to this request. To him, this is another violation of his privacy because now the employer is aware of the steps he's taken and the complaint made. He considers this yet another invasion of his privacy.

A.B. says that the envelope he received from Human Resources was not the original envelope from YHSSA. How he knows this is unclear. He also noted that he suspects that the letter had been photocopied as there were, he says, a number of staple marks in the corner and Human Resources told him that "all copies" had been destroyed. A.B. maintains that the letter and the consultation report were sent to Human Resources on the date the letter was written, February 3<sup>rd</sup>, long before he signed the consent. He says that the consent he signed on the 9th was so that he could get a copy of the documents, which would explain why there was no address for the recipient included on the consent.

## **DISCUSSION**

It is, frankly, impossible to figure out exactly what happened here. A.B. is fairly certain that YHSSA sent the letter and report to Human Resources on or about February 3<sup>rd</sup>, though YHSSA has no record of the letter being sent. YHSSA suggests that A.B. himself delivered the letter to Human Resources on February 9<sup>th</sup>, after picking up a copy of it from YHSSA that day. A.B. adamantly denies this. Either of these scenarios is possible. What is clear is that Human Resources did, in fact, receive a copy of the letter and report. They say they received it on February 9th, on the same day that A.B. visited the clinic and signed the consent form. The letter and the report were returned to A.B. on the same day. In fact, it appears that the letter and psychiatric report were recovered by A.B. before they were processed in any way by Human Resources.

Although A. B. suggests that the information was copied, there is no real evidence that that happened. In fact, there is no real evidence that anyone in Human Resources actually saw the letter or the consultation report. In the end, I cannot determine what happened here with any degree of certainty at all.

The fact that YHSSA cannot confirm if or when the documents left their offices, however, does raise some concerns and point to some procedural issues that perhaps should be improved so as to avoid the possibility of this kind of confusion in the future.

Firstly, the consent signed by A.B. is missing vital information because the name and address of the intended recipient is missing. The clinic says that there was no question in the minds of the clinic staff that the intention was that the letter would be sent to the employer. A.B., on the other hand, says that the only reason he signed the consent was to obtain a copy of the letter/report for himself. He is adamant that he was absolutely clear from the very beginning that he did not want any psychiatric information being provided to the employer.

Clearly, there is a reason that the form for the consent to release information has space to insert the name and address of the intended recipient. In this case, that information was left blank on the consent form. It would seem to me that this is fairly vital information and, in this case, that turns out to be true. If the form had been properly filled out, A.B.'s intentions at the time would be far more clear. While it appears that the Applicant signed the form without that information being filled in, it is the public body who must account for the collection, use and disclosure of personal information and it is therefore their responsibility to ensure that these forms are fully and correctly completed. It is not sufficient for the public body to rely on a verbal direction when dealing with personal health information.

The second thing that struck me was the physician's apparent lack of appreciation as to the impact that even the possibility of the disclosure of psychiatric information might have on an individual. Medical information is extremely sensitive. Psychiatric

information is, arguably, some of the most sensitive of medical information. In the public body's submissions to me, the physician described the contents of the psychiatric report as "matter of fact". I disagree with that description of the information contained in the report. There are a great number of details in the report which discuss the Applicant's medical history, prescription history and personal history which are very private in nature. In this, I agree with A.B.. The information in the report is extremely sensitive and should have been treated with the utmost respect and caution. It seems to me that medical health professionals should be listening carefully to the concerns of the patient. It seems to me that in this case the physician's approach was, perhaps, a little bit too casual. There do not appear to have been any notes taken of the physician's discussion with the Applicant about the report and how it would be used or disclosed. I am faced with one statement from the physician that the report and letter 'were reviewed in some detail' with the Applicant, and another from the Applicant who says the discussion never happened. Once again, this situation could have been clarified with a simple notation on the Applicant's chart from the doctor confirming that a discussion took place about the report and confirming the instructions received from the Applicant at the time.

Finally, there is a concern that no one at YHSSA could confirm, one way or another, whether the letter actually left their office and was delivered by them to Human Resources, or when that might have happened. It is vital that there be a way to track correspondence such as this so that, when a direction is given to disclose personal health information, YHSSA can say with certainty whether it has been sent, when it was sent, to whom it was sent and how it was sent. This could be addressed by keeping a simple ledger which lists these details when medical health information is released pursuant to a consent.

I should also make a brief comment about the document which was signed by A.B. several months prior to this incident in September, 2011, in which, he clearly consents to the disclosure of certain information, as outlined in the form itself, to his employer.

While I do not believe that YHSSA is relying on this consent to justify the disclosure of the information at question in this review, I would emphasize that I would not consider that consent to be sufficient to justify the disclosure of the psychiatric report, which did not even exist at the time of the first consent.

## **RECOMMENDATIONS**

As noted, it is impossible for me to determine how the letter and consultation report ended up in the hands of Human Resources. The investigation did, however, reveal some areas for improvement with respect to the record keeping at YHSSA. To address these areas, I would recommend:

- a) that a system be developed for dealing with Consents for the Release of Information with specific procedures to be followed;
- b) as part of that system, there should be a checklist provided to support staff to ensure that every step in the process is followed and that all staff are aware of the importance of ensuring that the forms are completely filled out, with space for the patient to make any specific notations he or she wishes to make by way of caution or otherwise;
- c) further, I recommend that any time a consent for the Release of Information is signed by a patient, it be entered into a ledger or other record and that the disclosure itself be tracked so that when someone asks, it can be determined when the record left the clinic, who it was sent to, by what method and, where possible, that a receipt for the information was confirmed by the recipient, with time and date, so that the confusion which resulted in this case can be avoided;
- d) finally, I recommend that when patients request the disclosure of personal health information to third parties, such as employers and/or insurance

companies, physicians be encouraged to make notes on the patient's file to confirm when a discussion takes place about the disclosure and any instructions received from the patient.

Elaine Keenan Bengts

Northwest Territories Information and Privacy Commissioner