

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 15-137

File: 14-189-4

July 10, 2015

BACKGROUND

This matter arises out of a complaint received from a tenant of the North Slave Housing Corporation. According to the complaint, information about the tenant was provided to Yellowknife Health and Social Services - Child Protection Services which resulted in him being denied supervised access to his children in his home. He says that when he called his social worker to discuss the community visit, she told him that they had received some complaints which affected his visitation status. He was told that the reports noted that he had received an eviction notice, that he was doing drugs in his home with young girls and that he had been violent with his elderly neighbours. He denied the allegations. He says he knows that all of this information was imparted to Child Protection Services by the manager of his housing unit, North Slave Housing Corporation and he knows this because the manager had advised him of the same complaint.

JURISDICTIONAL ISSUE

The first issue that I had to address was whether or not I had jurisdiction over the North Slave Housing Corporation. Under the *Access to Information and Protection of Privacy Act*, my jurisdiction is limited to “public bodies” as defined in the Act. That definition includes government departments and public agencies such as NWT Housing Corporation. The North Slave Housing Corporation (NSHC) is not specifically included in the list of public bodies. This does not necessarily mean that it is not subject to the Act. Where a publicly funded organization is not specifically referred to in the regulations, it is necessary to look further to see if it is so closely connected to a public body as to be considered, in fact, a part of the public body, to implement the public body’s projects and policies. In this case, I asked the NWT Housing Corporation (NWT HC) to provide more information about its relationship with NSHC. They advised

that, unlike Local Housing Organizations which are established by the NWT HC under the *Northwest Territories Housing Corporation Act* and contracted to provide NWT HC programming, the NSHC is an independent non-profit organization and does not provide any NWT HC programs. In fact, the NSHC was established by the Canada Mortgage and Housing Corporation (CMHC), a federal agency. CMHC provides funding to the NWT Housing Corporation under the terms of the Social Housing Agreement between those two parties and the NWT Housing Corporation, in turn, provides the funding to third party groups, such as the North Slave Housing Corporation, through long term operating agreements. While the major source of funding for NSHC is provided through the NWT HC, the NWT HC in turn receives those directed funds from CMHC. The NWT HC takes the position that as the NSHC is an independent organization, it does not share the same responsibilities as Local Housing Organizations under the Act.

I am not entirely convinced that NWT HC does not contractually control the programs and policies of the NSHC. Where an organization's main funding source is a public body and the organization is contractually or legislatively required to follow the public body's policy direction and implement its programs through a long term operating agreement, it should also be contractually required to comply with the obligations imposed by the *Access to Information and Protection of Privacy Act*.

The NSHC agreed with the NWT HC with respect to the jurisdictional issue. Notwithstanding this, however, in this case, the NSHC chose to co-operate with my review. In these circumstances, I do not have to decide whether or not I have formal jurisdiction.

THE RESPONSE FROM NSHC

The NSHC denies that it disclosed any of the Complainant's personal information to Child Protective Services or to any other person or organization. They provided me with a copy of the "Confidentiality" portion of their Procedures Manual. They have and use a

consent form to use if and when a tenant requests that information be shared or if the NSHC intends to disclose information to third parties.

The NSHC says that the only time that they would share information with Social Services, Income Support or Child Protection Services is if the tenant consents to that disclosure. When this happens, the Social Services Agency has usually already obtained the necessary consent from the tenant, in writing, and provides that consent along with a request for the information they need. Should they receive complaints from other tenants about domestic violence, yelling, noise, etc. tenants are told that they must contact the RCMP. In these cases, the RCMP are required by law to report any child welfare concerns to Child Protection Services. There had, they say, been numerous complaints received about the tenant in question in this case. The NSHC provided some background documentation supporting this fact. They are clear, however, that none of the information about these complaints was disclosed by NSHC to any other person or organization.

THE COMPLAINANT'S RESPONSE

The Complainant was provided with a copy of the submissions made by the NSHC and invited to respond. No response was received.

CONCLUSION

The issue of jurisdiction will remain unresolved. In my opinion, however, where a third party organization receives the bulk of its funding from an NWT public body and the organization is contractually bound to use that funding to meet the public body's policy directives, there should also be provisions in the contract which require those organizations to comply with the access and privacy requirements of the *Access to Information and Protection of Privacy Act*.

I applaud and thank the NSHC for co-operating with my review, even though there are issues of jurisdiction. I also applaud their efforts to ensure appropriate policies and procedures are in place to prevent the disclosure of personal information about their tenants. Whether or not they are bound by the *Access to Information and Protection of Privacy Act*, they are undoubtedly bound by the federal *Personal Information Protection and Electronic Documents Act* which imposes obligations on commercial organizations who collect personal information in the course of their business to protect that information from unauthorized use or disclosure.

In the circumstances, I make no specific recommendations.

Elaine Keenan Bengts
Information and Privacy Commissioner