

**NORTHWEST TERRITORIES  
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 09-076

File: 08-167-4

February 12, 2009

**BACKGROUND**

I have been asked by the Complainant in this matter to review the manner in which her personal information was collected, used and disclosed. The Complainant was an employee of a public body until dismissed from that employment in the summer of 2008. Prior to her dismissal, she was the subject of an investigation into workplace harassment. In her initial complaint to this office, which was made before her dismissal, her concern appeared to be that she had been required to participate in the investigation under duress and that the investigator had been provided with personal and confidential information regarding her employment. I asked the Complainant to elaborate on her concerns. By the time she responded, further actions had been taken with respect to her employment and her complaint was expanded. Many of the Complainant's concerns related to the employer's failure to follow their anti-harassment/conflict resolution policy, which are clearly outside of my mandate and will not be addressed here. However, she also raised other issues and felt that her personal privacy had been violated in a number of respects. In particular, she alleges:

- a) that the outside contractor hired to conduct the harassment complaint investigation had been provided with her personal employment information in advance of her meeting with the investigator and without her consent;
- b) that her employer violated her right to privacy as a supervisor and employee by disclosing certain information she had shared with another supervisor during the supervision process when she had not consented to the disclosure of that information;

- c) that other staff were informed that she was being suspended from her employment with pay - in fact she alleges that this information was shared with other staff before she, herself, had been informed;
- d) that the manner in which she was escorted from the workplace, during the middle of the work day, in full view of the remaining staff was a breach of her privacy in that it was a disclosure to the entire staff that she was being dismissed. She felt that this could have been done in a more sensitive way and at a time when other co-workers would not be present to witness the removal so that she might have felt less humiliation.
- e) that clients of the public body were advised the Complainant was “off work due to a personal crisis” which rendered her incapable of working;
- f) that an individual employed by the public body advised the Complainant that she had been the subject of discussions between that individual and management regarding her status as an executive member of the union and that information was then disclosed further at a union meeting to other union members. The other union members were also informed that the Complainant was no longer an employee and this information was imparted without the Complainant’s consent;
- g) that a senior manager engaged in discussions with a senior union executive member about the Complainant’s dismissal from her employment and provided the union with a copy of a letter addressed to the Complainant with respect her continuing eligibility to participate in union activities.

## **THE RELEVANT SECTIONS OF THE ACT**

The relevant sections of the *Access to Information and Protection of Privacy Act* appear to be as follows:

Section 1, which outlines the intents and purposes of the Act, is always relevant when considering the application of privacy issues:

1. The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
  - (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and

The definition of “personal information” as contained in section 2 of the Act includes the following:

personal information" means information about an identifiable individual, including

- (a) the individual's name, home or business address or home or business telephone number,
- (b) the individual's race, colour, national or ethnic origin or religious or political beliefs or associations,
- ...
- (g) information about the individual's educational, financial, criminal or employment history,
- (h) anyone else's opinions about the individual,
- (i) the individual's personal opinions, except where they are about someone else;

Section 40 of the Act outlines when and how a public body can collect personal information about an individual. It says:

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;

- (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.

Section 41(j) provides that, wherever possible, personal information about an individual should be obtained directly from the individual except where the information is collected for the purpose of hiring, managing or administering personnel of the Government of the Northwest Territories or a public body.

Section 43 of the Act directs how personal information about an individual can be used:

- 43. A public body may use personal information only
  - (a) for the purpose for which the information was collected or compiled, or for a use consistent with that purpose;
  - (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use; or
  - (c) for a purpose for which the information may be disclosed to that public body under Division C of this Part.

Sections 47 and 48 of the Act describe when the personal information about an individual can be disclosed to others:

- 47. A public body may disclose personal information only
  - (a) in accordance with Part 1; or
  - (b) in accordance with this Division.
- 48. A public body may disclose personal information

- (a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;
- (b) where the individual the information relates to has identified the information and consented, in the prescribed manner, to its disclosure;
- ....
- (g) for the purpose of hiring, managing or administering personnel of the Government of the Northwest Territories or a public body;
- ....
- (k) to an officer or employee of the public body or to a member of the Executive Council, where the information is necessary for the performance of the duties of the officer or employee or the member of the Executive Council;
- ....
- (s) for any purpose when, in the opinion of the head,
  - (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
  - (ii) disclosure would clearly benefit the individual to whom the information relates;
- (t) where the information is otherwise available to the public;

## **THE PUBLIC BODY'S POSITION**

I asked the public body to respond to the allegations of breach of privacy made by the Complainant. They did not provide me with any reference to those sections of the Act which might apply, but they did give me the following explanations:

1. Was the Complainant's personal information used to conduct the investigation without her knowledge or consent?

On this issue, the public body says that they used only the “normal personal data collected during the course of the Applicant’s employment with the public body” and that it was used only to determine that there was a situation that needed to be investigated.

2. Was the Complainant’s personal information disclosed to the investigator without the Complainant’s knowledge or consent?

The public body says that the only thing that the investigator was given was a document entitled “Terms of Reference” (a copy of which I have been given) for the work to be done by the investigator.

3. Did the public body improperly use or disclose personal information about the Complainant which she had given to another supervisor during the supervision process?

On this issue, the public body says that they interviewed the supervisor in question who denied disclosing or sharing any of the Complainant’s personal information with any other staff members

4. Was the Complainant’s privacy breached when her co-workers were advised of her suspension?

The public body responds that the only person advised of the suspension was the Complainant’s supervisor who was told that the Complainant would be taking time off with pay until further notice and that this information was necessary for the supervisor to ensure the ongoing work of the public body continued without unnecessary disruption. They also indicated that the rest of the staff was later informed that the Complainant would be off for a period of time and that the Supervisor would be notifying the

members of the public with whom the Complainant normally worked.

5. Was the Complainant's privacy breached in the manner in which she was escorted from the premises when she was suspended?

The public body says that the suspension of the Complainant was dealt with in a "cordial and low key" manner and that although other staff members may have seen her leave, no one was aware of the reason that she was leaving the premises. They say that the Complainant was advised of her suspension in her office, behind a closed door and that she and the Director who gave her the news then walked to the door. They acknowledge, however, that there is "no good way" to terminate an employee, which is a stressful situation for all involved.

6. Was the Complainant's privacy breached when clients were advised that she would be on an extended absence from work?

The public body says that in the days after the Complainant's suspension, the Complainant called the supervisor several times and, during one of these calls, the supervisor advised the Complainant that clients would be told that the Complainant had to take time away from the office and that the Complainant did not object to this manner of advising clients of her absence. The supervisor phoned each of the Complainant's clients and told them each the same thing. The staff were also told that if there were any inquiries from the public about the Complainant's absence, they should be directed to the supervisor.

7. Did the public body improperly disclose the Complainant's personal information to union members with respect to her employment status without her authorization or consent?

The public body says that a meeting was arranged between the union and staff of the

public body to discuss a policy grievance that the union had filed on behalf of the staff, but without their knowledge. The staff apparently felt that the union had acted inappropriately in the matter. The Complainant, a member of the union executive, apparently indicated an intention to attend the meeting even though her employment had by then been terminated. There was concern expressed about whether it was appropriate for her to be there and there was some exchange between a supervisor and a Director about this issue before it was eventually resolved.

On another occasion, the public body says that the Union shop steward approached the CEO informally to discuss a meeting related to Occupational Health and Safety. The shop steward was advised by the CEO that the management expectation was that only eligible individuals would be permitted to attend the meeting. The shop steward asked if the Complainant was eligible to which the CEO replied "no". The shop steward then asked if the Complainant knew this, and the CEO responded that she did.

They say that, but for these two instances, there was no discussion between the public body and the staff of the public body about the Complainant's status.

8. Was the Complainant's privacy breached when a copy of a letter addressed to her from the public body was delivered to the President of the union?

There was, apparently, some ongoing confusion as to the Complainant's status as an active member of the union after her suspension and dismissal. There had been a number of conversations and meetings on the issue involving the CEO, the Complainant and the President of the Union. The letter became necessary when the Complainant continued to enter the employment premises without the consent of management after her employment had been terminated to conduct union business. The public body says that the letter was written as a polite reminder to the Complainant and her representative (the Union President) about access matters. The public body points out that the union President was well aware of the Complainant's employment



and union status as both were executive members of the union and had represented each other in union matter many times.

## **THE COMPLAINANT'S POSITION**

The Complainant did not respond to all of the comments made by the public body. She did, however, provide further comment on several of the points raised.

1 and 2. Was the Complainant's personal information used to conduct the investigation without her knowledge or consent and was her personal information provided to the investigator without her knowledge or consent?

The Complainant says that she was unaware that personal, employment and performance data information was being collected about her to determine that there was a situation that needed to be investigated. She says that she did not know the investigation was about her until she was contacted by the investigator. Rather, she had been told only that the investigator was looking into "low moral" in the workplace. It is her position that her co-workers knew that she was the focus of the investigation before she did. Furthermore, she says that she did not know about the focus of the investigation until after the report was completed and the investigator had talked to most of the staff in the office about the allegations against her.

3. Did the public body improperly use or disclose personal information about the Complainant which she had given to another supervisor during the supervision process?

The Complainant says that the supervisor in question "clearly violated" her right to privacy by disclosing information discussed with her during the supervision process. Unfortunately, she did not indicate what information she felt that the supervisor had revealed, to whom, or in what context. She felt strongly, however, that she had the right to expect information imparted within a clinical supervision process to remain

confidential. She did not elaborate further on why she felt this was the case.

4. Was the Complainant's privacy breached when her co-workers were advised of her suspension?

The Complainant says she was escorted off the property in front of co-workers, including some co-workers with whom there had been discussions about the Complainant's alleged behaviour in the workplace. She thinks that those co-workers had been advised that she would be suspended prior to the date that it actually happened. Her reason for this conclusion is that these individuals had had meetings with management about her previously and, furthermore, that she had been "shunned" earlier on the day that she was suspended by one of these people and did not, she says, appear surprised when she was taken from the property. She does not provide any further details about these meetings or when they occurred or how it is she came to know about them.

5. Was the Complainant's privacy breached in the manner in which she was escorted from the premises when she was suspended?

The Complainant says that she was escorted off the premises at a time when other workers would be in attendance, which violated her right to privacy. She says that this was a disciplinary action and she had a right as an employee to have information relating to disciplinary action kept private and confidential. She says that although there was an exit right next to her office, the person who removed her from the premises chose, instead, to escort her out the front entrance, which required that they walk the entire length of the hallway, past co-workers offices.

6. Was the Complainant's privacy breached when clients were advised that she would be on an extended absence from work?

The Complainant says she was advised by a number of her former clients that they had been told that she would not be at work “for another month or longer”, and that she was off work because of a “personal crisis”. She also heard from her former clients that they had heard she was looking for another job and that she had family problems. In her opinion, the only place these explanations for her absence could have come from is from her employer.

7. Did the public body improperly disclose the Complainant’s personal information to union members with respect to her employment status without her authorization or consent?

The Complainant disagrees with the public body with respect to whether or not the membership in the union supported the grievance that had been filed on their behalf. Furthermore, she says that only two union members questioned whether she should be able to attend the meeting called to discuss the matter. She says one of those union members violated her privacy by informing the meeting that she was no longer employed by the public body. It is further her position that her privacy rights were violated when the same union member had discussions with senior management about her rights and privileges as a union member and then openly challenged those rights at an open union meeting.

The Complainant also says that the CEO of the public body engaged in discussions with the Chief Shop Steward of the union with respect to the Complainant’s attendance at the meeting described above and that the Shop Steward was told during this discussion that the Complainant was not to attend the meeting as she was not allowed on the premises. She feels that it is “very clear” that in having this discussion with the Shop Steward the CEO of the public body breached her privacy.

8. Was the Complainant’s privacy breached when a copy of a letter addressed to her from the public body was delivered to the President of the union?

The Complainant says she attended the premises of the public body in her capacity as a private citizen “seeking assistance as a private citizen from the programs and services offered by” the public body and that this visit was what prompted the letter from the CEO to her, prohibiting her from being on the premises, which letter was copied to the president of the union. She says she did not provide her consent to the public body to disclose this information. Furthermore, she feels she was unfairly treated in this regard because another employee dismissed from the same public body was not handed the same prohibition.

## **DISCUSSION**

I think that it is important to keep in mind, in discussing this complaint, that the *Access to Information and Protection of Privacy Act* has, as one of its purposes, to protect personal privacy by preventing the **unauthorized** collection, use or disclosure of personal information by public bodies. There are many instances in which the collection, use or disclosure of personal information is authorized and the main question in this case is whether the public body was authorized in some way to use or disclose the information which it did about the Complainant.

For this, we must first confirm that the information used or disclosed in this case was, under the definitions provided in the Act, personal information. There is no doubt that the Complainant’s name, her associations, other people’s opinions about her and her employment history are her personal information as defined in section 2 of the Act. I am not as convinced that the act of escorting the Complainant to the door upon being suspended can be construed as being personal information. People who see something like that might draw conclusions, but I’m not convinced that this, in and of itself, constitutes the use or disclosure of personal information about the individual being escorted.

Defining certain information as “personal information” does not necessarily mean that a

public body can never collect, use or disclose that information. The **collection** of personal information is governed by section 40 of the Act. It provides that no personal information may be collected by or for a public body unless the collection of the information is expressly authorized by an enactment, or the information relates directly to and is necessary for an existing program or activity of the public body.

Section 43 of the Act directs how personal information collected from an individual can be used and section 48 allows for when it can be disclosed to third parties.

Specifically, personal information can be **used** for the purpose it is collected or compiled or for a use consistent with that purpose, or where the person about whom it relates has consented to the use, "in the prescribed manner". It can also be used for a purpose for which the information may be disclosed under Division C of Part 2 of the Act. Division C of Part 2 includes a provision which allows personal information to be disclosed for the purpose of hiring managing or administering the personnel of the Government of the Northwest Territories or a public body.

Information can be **disclosed** to third parties for the purpose of hiring managing or administering personnel of the Government of the Northwest Territories or a public body. This is provided for in section 48. It may also be disclosed for the purpose the information was collected or compiled or for a use consistent with that purpose, or where the individual has consented "in the prescribed manner" to its disclosure. Personal information can be disclosed to an officer or employee of a public body where the information is necessary for the performance of the duties of the officer or employee. Finally, personal information may be disclosed where, in the opinion of the head of the public body, the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure or where the information is otherwise available to the public.

With this in mind, I will address each of the issues raised by the Complainant.

1. Was the Complainant's personal information used to conduct the investigation collected without her knowledge or consent? If so, was this collection of her personal information contrary to the Act?

Section 30 of the *Public Service Act* of the Northwest Territories specifically gives the head of a public body the authority to investigate allegations of misconduct or incompetence within the workplace. In order to investigate, information has to be collected. I am satisfied that the *Public Service Act* gives the head of a public body the necessary authorization to collect personal information about an employee for the purposes of an investigation such as the one undertaken in this case. In other words, the collection of personal information in these circumstances is "expressly authorized by an enactment" and that collection did not require the knowledge or consent of the Complainant.

2. Was the Complainant's personal information disclosed to the investigator without the Complainant's knowledge or consent? If so, was this disclosure of her personal information contrary to the Act?

I have had the benefit of seeing the Terms of Reference provided to the Investigator in this case. Although the Complainant seems to think that these Terms of Reference contained significant personal information about her, they did not. The Terms of Reference did contain some minimal personal information about the Complainant, including her name, that she was an employee of the public body, and that there had been an allegation of improper workplace conduct. The document also listed the allegations of misconduct against the Complainant. There is also no doubt that the information was provided to the investigator without the Complainant's knowledge or consent.

As noted above, the Act allows the use and disclosure of personal information for the purpose of the hiring, managing or administering of the personnel of a public body.

Conducting an investigation into workplace harassment clearly falls within that broad mandate and I am satisfied that, although the Complainant's personal information was disclosed to the investigator, there was nothing improper about the disclosure.

3. Did the public body improperly use or disclose personal information about the Complainant which she had given to another supervisor during the supervision process?

The Complainant did not outline what specific information she was concerned about with respect to this allegation. As I understand it, the Complainant was upset because it appears that her clinical supervisor was asked questions about her during the investigative process. Without these specifics, it is impossible for me to comment on whether or not the information in question even constituted personal information. An employee's actions or statements made while undertaking their job responsibilities are not personal information, but corporate information. It sounds, in this case, like any information disclosed by the clinical supervisor during the investigation would have been information about the Complainant's actions while engaged in the duties of her employment and not, therefore, personal information. I simply do not have enough information about this particular complaint to come to a conclusion about whether there was any contravention of the Act.

4. Was the Complainant's privacy breached when her co-workers were advised of her suspension?

The fact that a person has been suspended is not directly listed in the definition of personal information, though it is arguable that that kind of information could be considered 'personal information' under the Act.

The question here is not whether the information was disclosed, because it clearly was. The question is whether the disclosure was contrary to the Act. Again, I am satisfied that it was necessary to the day to day operations of the public body and the

management of its personnel that the other staff be advised, in the least invasive way possible, about the fact that a co-worker would not be returning to work. It clearly impacts on the work of the rest of the employees in the office. In this case, I am satisfied that the public body dealt with the issue in a responsible way and that they did not provide any significant details to the Complainant's co-workers other than the fact that she had been suspended and then dismissed. There is no suggestion that there were any details provided about the reasons for the suspension and/or the dismissal, although I have no doubt that there were assumptions made and conclusions reached by her co-workers in the wake of her removal from the workplace, particularly in light of the investigation done prior to her suspension. I cannot, however, conclude from the materials provided to me that the public body disclosed more information than was necessary for the proper functioning of the workplace.

5. Was the Complainant's privacy breached when she was escorted from the premises when she was suspended?

Again, I'm not entirely convinced that the action of escorting the Complainant to the door constituted a disclosure of personal information. However, assuming for the purposes of this review that it was, I am satisfied that the disclosure was minimal and that it was justified by the public body's need to manage and administer personnel within the workplace. Public bodies should attempt to be sensitive to the fact that being suspended and/or dismissed and escorted from a workplace is at best awkward and at worst incredibly embarrassing for the individual involved and that there are ways to accomplish this without revealing too much and without putting the individual in the spotlight. In this case, I am satisfied that it was done in a manner which did not draw attention unnecessarily to the Complainant or reveal any details about the reason she was leaving.

6. Was the Complainant's privacy breached when clients were advised that she would be on an extended absence from work?



This is a situation in which the Complainant had a client base who would be wondering why, all of the sudden, the Complainant's services were no longer available to them. Again, some information had to be imparted to those clients and it appears that the public body dealt with the situation appropriately by advising clients that the Complainant had to take some time away from the office. The Complainant was apparently advised that this is what the public would be told and she did not object. I would suggest that because the Complainant did not object it was not unreasonable to assume that she was implicitly consenting to that manner of dealing with the situation. The Complainant says that clients told her that they had been told a variety of things about her absence from the office. The fact of the matter is that northern communities are small and rumors begin quickly and often without any apparent reason. Although I am sure that there were comments exchanged in the community about the reasons the Complainant was not at work, there is no evidence whatsoever that the public body said anything other than what was implicitly agreed to by the Complainant and that information was the barest minimum of information necessary to advise clients that she was no longer available to them.

7. Did the public body improperly disclose the Complainant's personal information to union members with respect to her employment status without her authorization or consent?

By the time that the meeting was held in which the Complainant's status as a member of the union came into question, it is fair to say that everyone in the workplace would have been aware of her extended absence and, most likely, that she had been dismissed from her position. As noted above, it seems to me that in order to manage the remaining personnel in the workplace, it would be necessary to advise them that one of their co-workers was no longer working with the public body and to provide a basic explanation (i.e. she quit, she was dismissed, she's on a leave of absence). In this case, the circumstances suggested that she had been dismissed (there was an investigation into her misconduct, after which she was escorted from the premises) and even if nothing at all had been said, it would have been fairly obvious that she had been

dismissed and her co-workers would likely have come to this conclusion on their own. Furthermore, because of the Complainant's position within the union, and her stated desire to continue to participate in union activity, it became an issue of management and administration of the workforce again. It was necessary to confirm her status to participate in these meetings one way or another. The issue was apparently raised in the meeting by a member of the union, not by a member of the management team and, as such, it had to be addressed. I am not convinced that there was any disclosure at this meeting (in light of the fact that it was already general knowledge within the workplace and most likely within the union) and if there was a disclosure, I am satisfied that it was necessary for the management of personnel.

8. Was the Complainant's privacy breached when a copy of a letter addressed to her from the public body was delivered to the President of the union?

The letter in question was written because, after her dismissal, the Complainant continued to come to the office. She says it was to use the services of the public body but she does not specify what services she was using. The public body says that her ongoing attendances at the workplace were in connection with her union activities. The letter confirmed that she had been dismissed from her employment and that she had been instructed at that time that she was not to return to the premises thereafter. It also indicated that she had been observed on the premises since her dismissal. It reminded her that she was not permitted to be at the workplace without an invitation or unless she was in need of the services offered by the public body. There was a paragraph that quoted Article 11.02 of the Collective Bargaining Agreement and which indicated that she would be permitted on the premises with prior permission so that she could conduct union business.

The question for me is whether, in copying the union president, there was any disclosure of information. There is no doubt that the union president was already aware that the Complainant had been dismissed. The Collective Bargaining Agreement requires the public body to advise the union of all employees who have been

terminated. Furthermore, her role in the union suggests that the fact that she had been terminated would have been relayed to the president as necessary information in connection with the management of the personnel of the public body. The union plays an integral role in connection with personnel issues and in this particular case, the Complainant was not only a union member, but a member of the Union executive so it would be surprising if the union president was not aware that she had been dismissed. If he already had the information from another source (perhaps from the Complainant herself), it cannot be said that the public body disclosed it. Furthermore, this letter concerned the union. It seems to me that there was nothing in this letter that the President of the union did not already know. Furthermore, the letter was intended to address, more than anything else, a union matter. Again, therefore, the "disclosure", if it can be classified as such, was done in the management or administration of the public body's personnel and was therefore authorized.

## **CONCLUSIONS AND RECOMMENDATIONS**

Based on the above, it is my opinion that the public body did not improperly collect, use or disclose the Complainant's personal information. I note, however, that although the public body seemed to take necessary precautions to deal with the whole situation involving the Complainant in a manner that respected her personal information as much as possible, they were unable to point me to the provisions in the Act which applied to the situation. The contents of some of their correspondence also made me wonder whether they yet fully understand the concept of personal information and what constitutes personal information. I would like to be able to conclude that the public body acted appropriately in this case because they fully understood and could justify the reasons why they collected, used and disclosed the information which they did. Instead, I got the impression that although they were careful in dealing with the Complainant's information, they weren't fully aware of the provisions of the Act which governed them in the circumstances. I am heartened, however, to see that this public body, which has had some struggles in this regard, appears recognize the issues and is starting to establish more appropriate policies and processes. The only

recommendation I would make, therefore, would be that this continue to be a focus for management and that they continue to remind their employees about the importance of privacy issues not only as they relate to clients, but also as they relate to personnel.

Elaine Keenan Bengts  
NWT Information and Privacy Commissioner