

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER
Review Report 20-221**

File: 19-154-4
March 29, 2020
Citation: 2020 NTIPC 15

BACKGROUND

On May 6, 2019, our office received a complaint from a business owner that the Department of Industry, Tourism and Investment (ITI) had disclosed sensitive business information to one or more third parties, and that the disclosure had resulted in giving those third parties information that negatively affected his ability to sell his business. The Applicant had recently closed his business and was trying to sell it. He alleged that he had received several offers that had either fallen through or come off the table because someone from ITI had been telling potential buyers that the business was likely to go into bankruptcy soon and that they should wait until that happened because the price for the property and the business would likely go down if that were to happen. He felt that the inappropriate disclosure was proven by an email he received from one of those third parties in which included the following:

I spoke to [a named ITI employee] who provided me with your contact information. We have an interest in further discussing the operation that you presently own at [community]. It is apparent however that time is of the essence, as our company is considering other business opportunities in the area.

For the sake of clarity, the named ITI employee will be referred to in this report as A.B.

THE DEPARTMENT'S SUBMISSIONS

I asked the Department to provide their explanation and any other context that might be relevant to the allegations made. Their response included the following comments and observations:

- A.B. was, in fact, the Complainant's contact in relation to his dealings with the Department concerning his business. All correspondence with prospective buyers for the Complainant's business was channelled through A.B. for the sake of continuity.
- One other employee had received an inquiry from an individual interested in buying the Complainant's property and business and that individual was simply referred to A.B.
- There had been a news report about the closing of the Complainant's business and it was after this report that individuals began to contact ITI about purchasing the business/property.
- With the express consent of the Complainant, A.B. shared the Complainant's telephone number with prospective buyers
- AB did consult with representatives of the BDIC about the best way to market the property, indicating an interest in minimizing disruption in services provided by the business. BDIC indicated that the quickest way to sell the property would be to have interested parties make offers directly to the Complainant and that this would also lead to a higher offer than could be expected if the mortgage went into foreclosure, which would require going to court and additional likely costs of maintaining the property.

It appears that ITI and the Complainant's company had a business relationship and may have provided some funding to the company. BDIC is a crown corporation of the GNWT which, apparently, had also loaned money to the company.

A.B. denied he had discussed the Complainant's business with any third party other than BDIC except to the extent necessary to direct potential buyers to the Complainant. He specifically denies discussing with any third party other than BDIC the possibility of bankruptcy or foreclosure. In fact, it appears that both ITI and BDIC had clear interests in avoiding such proceedings in favour of a sale of the business to a third party.

The Complainant was invited to respond to the submissions received from ITI but declined to do so.

THE LAW

Section 1 of the *Access to Information and Protection of Privacy Act* outlines the purposes of the legislation. Those purposes include to make public bodies more accountable to the public and to protect personal privacy by....preventing the unauthorized collection, use or disclosure of personal information.

Personal information is defined as information about an "identifiable individual" including among other things, information about the individual's financial or employment history.

Part II of the *Access to Information and Protection of Privacy Act* outlines rules and limits placed on public bodies in relation to the collection, use and disclosure of personal information. As noted above, by definition, personal information is information about an "identifiable individual". It does not apply to the collection, use and disclosure of third party business information. On the face of it, Part II of the Act does not, therefore, apply to information about the Complainant's business.

Having said that, when dealing with a small, closely held business, personal information and business information can be virtually indistinguishable. Where the business and the individual are closely related or are one and the same, care must be taken to ensure that there is no unreasonable invasion of the individual's privacy or unauthorized disclosure of sensitive personal information. While the disclosure that a company is facing a foreclosure or bankruptcy is not contrary to the legislation, the disclosure that an individual is would, in most cases, amount to an unauthorized disclosure.

It is to be noted, as well, that section 24 of the Act prohibits the disclosure of certain kinds of third party business information in the context of an Access to Information Request. That section prohibits the disclosure of information that would reveal

- trade secrets of a third party
- financial, commercial, scientific or labour relations information obtained explicitly or implicitly in confidence from a third party
- information that could be reasonably expected to result in undue financial gain or loss to any person, or prejudice the competitive position of a third party.

This review is not in the context of an Access to Information request under the Act. It does, however, help to define the meaning and intention of the legislation. If a potential buyer had made an Access to Information Request about any outstanding loans the business might have had through ITI, it would be contrary to section 24 to disclose records which suggested the possibility of foreclosure or bankruptcy of the company because that disclosure could be reasonably expected to result in undue financial loss. This section of the Act, therefore, while not directly applicable, clearly indicates the spirit and intention of the legislation.

CONCLUSION

All of this said, I could find no evidence at all that any employee of ITI improperly disclosed to potential buyers any information that suggested that the Complainant or his

business were facing financial difficulties. ITI did share the Complainant's telephone number with potential buyers, but this was with the clear consent of the Complainant. I do not agree that the email which the Complainant referred me to indicated anything about the business's financial situation. It indicated only that the ITI employee had provided the Complainant's email contact information and it appears that the Complainant had expressly agreed to this information being provided to prospective buyers. Furthermore, the evidence is that ITI wanted to avoid any legal steps with respect to the Complainant's loans and that ITI felt that it would have been better for all concerned, including ITI, if the Complainant could sell the business before there was a need to take such legal proceedings. It was not in ITI's interests to disclose to any person the state of the Complainant's business's finances. On the other hand there is some evidence in this case that the news report that had appeared in the local press did perhaps suggest the possibility of financial difficulties and/or legal action against the Complainant. If potential buyers had the impression that foreclosure or bankruptcy was imminent, it is more likely that that impression was left by the news story than as a result of an unauthorized disclosure by ITI.

In the circumstances, I find that there is no evidence that any employee of ITI disclosed to any potential third party purchaser that the Complainant's business was in financial difficulty and facing bankruptcy or foreclosure. I therefore make no recommendations with respect to this matter.

Elaine Kennan Bengts
Information and Privacy Commissioner