

**NORTHWEST TERRITORIES  
INFORMATION AND PRIVACY COMMISSIONER  
Review Report 20-225**

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April 16, 2020

**BACKGROUND**

In May 2019 I received a complaint from an individual that his privacy had been breached when his name was disclosed as the person who had made a Request for Information from the Department of Infrastructure. Specifically, he was upset that the individual assigned to respond to his request (A.B.) disclosed to another employee within the department (C.D.) the details of the request. He alleged that C.D. had subsequently disclosed to the Deputy Minister the same information. It was the Complainant's contention that neither C.D. nor the Deputy Minister had a need to know and that the disclosure of his identity as the Applicant was a breach of his privacy.

**THE PUBLIC BODY'S RESPONSE**

The public body advised that A.B. had received the Request for Information from the Complainant. The request was for the Complainant's own personal information that existed in the files of several named individuals within a particular department. A.B. did not have direct access to the records of any of the named individuals so he requested assistance from C.D. who was a director in the division in which all of the named individuals were employed. C.D. therefore had the ability to access the necessary records and search for the responsive records.

At some point, C.D. sent an email to the Deputy Minister the Department of Infrastructure and that department's ATIPP Coordinator which stated:

FYI, [the Complainant] has filed an ATIPP request with ITI. TSC will comply with the request as per ATIPP protocols.

It is unclear what the purpose of this email was, other, perhaps, than to keep the Deputy Minister up to date. The Department acknowledged, during the course of this review, that this email constituted an unauthorized disclosure of the Complainant's personal information.

## **DISCUSSION**

There is nothing in the current version of the *Access to Information and Protection of Privacy Act* that specifically prohibits the disclosure of the name of an applicant making a request for information. However, section 47 of the Act prohibits the disclosure of personal information except in accordance with the Act. Generally speaking, the ability of public bodies to use or disclose personal information is limited to the purposes for which the information is collected. There are some exceptions set out in section 48 which outlines circumstances in which a public body "may" disclose information, including:

- for the purpose for which the information was collected or compiled or for a use consistent with that purpose;
- to an officer or employee of the public body .... where the information is necessary for the performance of the duties of the officer or employee

It should be noted that Bill 29, *An Act to Amend the Access to Information and Protection of Privacy Act* which is currently awaiting a coming-into-force date, will include the following section:

The identity of an applicant shall be kept confidential by the head of the public body and the coordinator designated under section 68.1, and may be disclosed only to the extent required to respond to the request for access

While this provision is not yet in force, it reflects the current thinking and general approach taken by most public bodies.

When an individual makes a request for his or her own personal information, there is no way to respond to that request without disclosing his/her name to the employee who will be searching for responsive records. The amendment noted above recognizes this fact. Disclosure of the identity of the Applicant is, in these circumstances, impossible to avoid. That said, in my experience public bodies have always been careful not to reveal the identity of an applicant where it can be avoided. That is, in my opinion, the appropriate approach keeping in mind the spirit and intention of the legislation. I am satisfied that in this case, the disclosure of the identity of the Applicant to C.D. was in accordance with the legislation.

The disclosure of the identity of the Applicant by C.D. in an email to the Deputy Minister was, however, not an authorized disclosure. There was no operational need for the Deputy Minister to know the identity of the Applicant. In this respect, I find that C.D. disclosed this information without authority under the Act.

## **RECOMMENDATION**

Most GNWT employees are generally aware of their responsibilities under the *Access to Information and Protection of Privacy Act*. Few, however, have an in-depth knowledge and understanding of the legislation. Errors like this are going to be made from time to time.

Once information is improperly disclosed that disclosure cannot be undone. This is why it is important to do everything possible to continue to educate employees with respect to their responsibilities under the Act and to apply safeguards where possible to remind them about those responsibilities. There are some basic administrative steps that can be taken to help to avoid such breaches. I **recommend** that the ATIPP Coordinator tasked with responding to access to information requests

- a) avoid identifying the Applicant where possible when requesting necessary searches; and
- b) when the request is for personal information and it is not possible to withhold the name of the applicant, to ensure that correspondence in relation to the search for responsive records contains a reminder that the fact that a request for information has been made and the identity of the applicant are confidential and should not be further disclosed without further discussions with the coordinator

Elaine Keenan Bengts  
**Information and Privacy Commissioner**