

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER**

Review Report 20-234

Citation: 2020 NTIPC 34

File: 19-225-4

July 3, 2020

BACKGROUND

This matter came to our attention as a privacy breach complaint from a former employee of a public body. The complaint raised a number of privacy issues.

The first was in relation to the collection (or attempted collection) of unnecessary information from him. The Complainant was a tenant of the Northwest Territories Housing Corporation (NTHC). When applying for housing he was asked for a Social Insurance Number (SIN) as part of the paperwork required for the purpose of finalizing the housing allocation. When he inquired as to why they would need his SIN in relation to his housing allocation, he was told that it was so that the Northwest Territories Housing Corporation (the public body providing the housing) could conduct a credit check, which was a condition for the lease of a rental unit. After some discussion, the matter was resolved in the Complainant's favour. The Complainant, however, questioned the collection of SIN numbers of tenants as a general matter, referring to material on a Government of Canada website that contained the following statement:

Does a landlord require my Social Insurance Number (SIN)?

"No. Your Social Insurance Number is a confidential number used for income reporting purposes. Under the law, organizations cannot require you to consent to the collection, use or disclosure of your personal information unless it is required for a specific and legitimate purpose.

This means that, unless an organization can demonstrate that your SIN is required by law, or that no alternative identifier would suffice to complete the transaction, you cannot be denied a product or service on the grounds

of your refusal to provide your SIN." **Canada Employment Social
Development Services**

The Complainant also raised concerns about the fact that his employment contract had been shared with an administrative staff person in his place of employment when a copy of an email addressed to him from NTHC included the contract as an attachment. The administrative staff person had no operational need for this document and the Complainant considered this sharing of his contractual arrangement with NTHC as an invasion of his privacy. He made inquiries as to why this document had been shared with the administrative staff person but received no response.

The Complainant also alleged that the local RCMP were receiving (and expecting to receive) a list of all public housing tenants from the local housing authority. This complaint was connected to an incident in which the Complainant alleged that three RCMP officers "circled" his housing unit and banged "forcefully" on the front door and, when he responded, the RCMP demanded to see identification. When asked the reason that this was needed, the Complainant alleged that he was told that they "needed to establish who I was and verify my identity with their records to determine whether or not I should be at that unit". He assumed from this that the RCMP had access to private tenant information for all public housing units in the community.

SUBMISSIONS FROM THE HOUSING CORPORATION

With respect to the collection of SINs, the Northwest Territories Housing Corporation (NTHC) corrected the Complainant's understanding of the reason for collecting the SIN. Despite what the Complainant claims to have been told, the NTHC does not conduct credit checks for public housing tenants. They do, however, collect the SIN of tenants, with their express consent, for the purpose of obtaining income verification information directly from Revenue Canada in order to assess the appropriate rent to be charged in accordance with their formula. This has been the subject of previous reviews and it has been found that this is an acceptable collection and use of personal information under

the *Access to Information and Protection of Privacy Act*, provided the appropriate consent has been given.

With respect to the concerns raised about providing tenant information to the RCMP, the Housing Corporation referred to section 48(e) of the Act which states that a public body may disclose personal information to a law enforcement agency for law enforcement purposes. They indicated that their analysis was that since the requested information consisted solely of a name and address, this would not be considered an unreasonable invasion of privacy as “that information would not fall under any of the categories listed under 23(2)(a,b,c,d,e,f,g,h,i,j) of the Act.

The Housing Corporation did not address the breach of privacy occasioned by the forwarding of an email to which was attached a copy of the Complainant’s employment contract to an administrator employed at the NTHC.

DISCUSSION

The privacy concerns raised by the Complainant are all legitimate.

1. Was there a breach of the Complainant’s privacy when a copy of his employment contract was included in an email that was copied to an administrative assistant at the NTHC?

The simple answer to this is “yes”. The administrative assistant in NTHC received a copy of an email addressed to the Complainant. Attached to the email was a copy of the Complainant’s employment contract. That contract and the terms of the contract did not in any way concern the administrative assistant. Because the public body did not address this allegation, however, it is difficult to specifically address how the error happened and what steps might be taken to avoid a similar breach in the future. This kind of error is easy to make if one is not paying attention when communicating with others. It often happens when an individual automatically hits the “reply all” button when

responding to an email chain, without considering the content of either the email itself or anything attached to the email. In this case, it resulted in a breach of the Complainant's privacy.

2. Was the attempt to collect the Complainant's SIN contrary to the *Access to Information and Protection of Privacy Act* and is the NTHC's collection of SINs generally authorized by the Act?

This office has previously discussed the NTHC's collection of income information about tenants directly from the Canada Revenue Agency (Review Report 17-164).

Historically, the NTHC required tenants to submit significant income information in the form of income tax returns and bank records for the purpose of calculating and assessing rent for individuals receiving rental assistance. Several years ago the NTHC moved to a much more efficient system in which, with the express written consent of the tenant, the required information is provided directly to the NTHC's system by CRA. This not only avoids the collection of copious amounts of unnecessary information, but it is far more privacy protective because no one ever sees the information - the information is fed into the NTHC's system which does the calculations automatically. As I noted in Review Report 17-164, so long as the tenant's consent is explicit and knowledgeable, the collection of information in this manner was in compliance with ATIPPA. In order to collect information from the CRA, the tenant's SIN is required. The collection of the SIN for this purpose is, therefore, not contrary to the Act.

The problem, however, is the explanation that was provided to the Complainant when he made inquiries as to why his SIN number was required. The answer he was given was totally incorrect. Front line staff should have a clear understanding as to why they are collecting any kind of personal information and be able to explain the purpose of the collection to the individual seeking services. This is fairly basic in terms of privacy principles and good information management practices. The Complainant was told that the SIN was required in his case to do a credit check when, in fact, the NTHC does not conduct credit checks for public housing tenants. The employee who provided the

Complainant with a response to his inquiry about the purpose for collecting this information was either misinformed or not informed at all and made an assumption that was not supported in fact. When public bodies collect personal information, they must be able to explain to the individual, clearly and accurately, the purpose for the collection and how the information collected will be use and/or disclosed. In all probability, if the Complainant had made his inquiry of a manager in the head office of NTHC he would have received a more accurate answer. However, he should receive the same answer regardless of who he asks. The individual tasked with dealing directly with tenants in relation to the application process should have the requisite knowledge to accurately respond to inquiries such as the Complainant's. If the answer is not known by that person, he/she should be referring the question to someone else who does rather than providing information based on assumptions and/or misunderstanding. Clearly, there is a need for better training and/or education so that this kind of error does not result in the misleading of tenants.

3. Does section 48(e) of the Act authorize the disclosure of personal information of tenants to the RCMP without consent?

The NTHC's response to this question is more concerning.

The first concern from the Housing Corporation's response arises with respect to their conclusion that the disclosure of a tenant name and associated address does not amount to an unreasonable invasion of privacy pursuant to section 23(2) of the Act.

It is to be noted, as a preliminary matter, that section 23 is included in Part I of the Act which addresses requests made for access to information. Section 23 prohibits the disclosure of third-party personal information in response to an access to information request where that disclosure would result in an unreasonable invasion of the third party's privacy.

Section 23(2), in the context of an access to information request, outlines circumstances in which there is a presumption that disclosure of the information will amount to an unreasonable invasion of privacy. Subsection 23(2)(h) raises such a presumption where the personal information consists of the third party's name where it appears with other information (such as an address or telephone number) about the third party. Contrary to the NTHC's analysis, therefore, the disclosure of an individual's name and address would, in the context of an access to information request, amount to an unreasonable invasion of privacy and the public body is prohibited from disclosing this information when responding to an access to information request.

This, however, is not about an access to information request. This is about Part II of the *Access to Information and Protection of Privacy Act* which sets out the responsibilities of public bodies to protect the personal information it collects in the course of governing and providing services to the people of the Northwest Territories. While section 23(2) may assist a public body generally in interpreting Part II, it is not intended to be used to justify or authorize disclosures under Part II.

Section 47 of the Act provides that a public body may disclose personal information only in accordance with the Act. Section 47.1 provides that:

47.1. An employee shall not, without authorization, disclose any personal information received by the employee in the performance of services for a public body.

Section 48 of the Act sets out those circumstance in which a public body can use or disclose personal information it holds in its possession. Included in that list is section 48(e) which allows (but does not compel) a public body to disclose personal information to a "law enforcement agency for law enforcement purposes".

Section 2 of the Act provides a definition for the term "law enforcement" as follows:

"law enforcement" includes

- (a) policing, including criminal intelligence operations,
- (b) investigations that lead or could lead to the imposition of a penalty or sanction, or
- (c) proceedings that lead or could lead to the imposition of a penalty or sanction

The RCMP is a law enforcement agency. They do policing and investigations that lead or could lead to the imposition of a penalty or sanction. However, Section 48(e) must be read with the spirit and intention of the legislation in mind. Although the disclosure of personal information for law enforcement purposes is contemplated by the ATIPP Act, one of the main objects of the Act is to limit the dissemination of personal information to that which is necessary and proportional. Section 48(e) must, therefore, be read narrowly. If personal information is to be disclosed to a third party, no matter what the purpose, the information released should be **limited** to that information **necessary** for a **specified purpose**. It may be that the RCMP thinks that it would be nice to have a list of who lives in which residence for the purposes of their general policing duties. That, however, is not a sufficient reason for the Housing Corporation (or any of the local housing organizations) to be providing that information. There must be a **specific** "law enforcement" purpose and that purpose should be clear. Except in the rarest of cases, no information about tenants should be provided to the RCMP without a warrant. It might, for instance, be acceptable to provide the name and address of a particular tenant in the case of an urgent and emergent situation where there is imminent threat of harm to someone and there is no time to get a warrant. Section 48(e), however, is not intended to allow public bodies to generally provide databases and detailed personal information to a police agency simply because that agency might find the information useful at some point in dealing with a policing issue. I find that, to the extent that the housing organization in this case disclosed names and addresses to the RCMP for no

apparent purposes, they did so in contravention of the *Access to Information and Protection of Privacy Act*.

It is to be noted that local housing organizations are not named as public bodies subject to the ATIPP Act. I have, however, taken the position that the Northwest Territories Housing Corporation, under whose direction each of the local housing organizations work, is responsible for ensuring that all local housing organizations respect the obligations imposed by the Act. Furthermore, it is my understanding that the Northwest Territories Housing Corporation contractually requires local housing organizations to comply with the Act. The NTHC has previously recognized their responsibility for ensuring compliance. These comments, therefore, are directed to the NTHC.

RECOMMENDATIONS

I make the following recommendations:

1. That the NTHC create and disseminate guidelines with respect to email etiquette, to include a caution with respect to the use of the “reply all” button;
2. That the NTHC and/or the local housing organizations ensure that employees collecting personal information from tenants are fully informed and knowledgeable about the purpose for the collection of each piece of personal information collected from tenants and potential tenants.
3. That the NTHC and/or the local housing organizations provide employees with contact information for a manager or other senior employee who can respond to questions about the purpose for the collection of personal information in the event that clarity is required.

4. To the extent that any local housing organization currently provides tenant information to the RCMP as a matter of course, that this practice cease immediately.

5. That the NTHC and/or each local housing organization create and implement clear policies with respect to the sharing of tenant information with the RCMP or other law enforcement agencies. These policies should include, as a minimum:
 - as a general rule, that a warrant be required before tenant information of any description is provided to the RCMP or any other law enforcement agency;
 - defining those limited and specific instances in which information can be disclosed to law enforcement without a warrant (i.e. only in emergent situations where there is imminent danger to the health or safety of an individual);
 - requiring that all requests from the RCMP for tenant information be made in writing, clearly setting out the specific purpose for which the information is required;
 - providing that when tenant information is shared with the RCMP or another law enforcement agency, that the information shared be limited to that which is necessary for the stated purposes;
 - requiring the housing organization to make a record of when tenant information is disclosed to the RCMP or another law enforcement agency, including the date and time of the request, the stated purpose of the request, the specific information provided, whether or not a warrant was presented and a copy of the written request;
 - that tenants be advised, within a reasonable period of time, that their information has been disclosed to the RCMP or another law enforcement agency, the specifics of the information provided and contact information for someone within the local housing organization who can respond to

questions about the disclosure, and contact information for the Office of the Information and Privacy Commissioner indicating that a request for a review of the decision can be made to the IPC.

Elaine Keenan Bengts
Information and Privacy Commissioner