

NORTHWEST TERRITORIES INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 01-19
Review File: 00-194-4

BACKGROUND

The Stanton Regional Health Board (SRHB) is an agency created by the Government of the Northwest Territories to provide health services to the Yellowknife region. Individuals receive goods or services from the SRHB and the SRHB, in turn, bills NWT Healthcare for insured services. Not all goods and services provided by the SRHB, however, are insured. For these services, the individual is billed directly. Unfortunately, a large number of these billings are returned to the SRHB because the individual has moved.

Without a forwarding address, SRHB must absorb the cost. They say that over a four year period, over \$100,000 has been lost as a result of such inability to trace the individuals.

NWT Healthcare receives "migration reports" from the other provinces and territories for individuals who apply for healthcare coverage elsewhere in Canada and these reports include the individual's new address. SRHB has requested NWT Healthcare to provide them with new addresses which come into their possession in this way for those individuals who owe them money for uninsured services and have left the Northwest Territories without leaving a forwarding address. SRHB wishes to have this information to follow up on collection of the debts owing to it.

NWT Healthcare has denied access to this information.

By letter dated July 26th, 2000 the SRHB requested that I review NWT Healthcare's decision to refuse access to the requested information. Submissions were requested and received from both parties.

RECORDS AT ISSUE:

The records at issue are the mailing addresses of individuals who:

- a) have obtained uninsured health services from SRHB;
- b) have moved without providing SRHB with a forwarding address and without paying for the uninsured health services;
- c) have applied in another province or territory for health care benefits

THE PARTIES' POSITIONS

NWT Healthcare takes the position that the information in question is "managed" in accordance with Section 15 of the *Medical Care Act* and that that section does not permit the disclosure of personal information such as that requested by SRHB. They further point out that the *Access to Information and Protection of Privacy Act* also prohibits the disclosure of such information. Quite rightly, they say that although the SRHB is a public body as that term is defined in the ATIPP Act, it is a separate public body and that personal information should not be shared between public bodies.

Section 15 of the *Medical Health Care Act* states as follows:

1. Every person employed in the administration of this Act
 - a) shall preserve secrecy with respect to all matters that
 - i) come to his or her knowledge in the course of his or her employment, and
 - ii) pertain to insured services rendered and payments made for insured services; and
 - b) shall not communicate any matters referred to in paragraph (a) to any other person except as otherwise provided in this section or section 16

2. Subject to subsection (3), a person referred to in subsection (1) may provide information pertaining to
 - a) the date on which insured services were provided;
 - b) the name and address of the person who provided the services; and
 - c) the amounts paid under the Medical Care Plan for the insured services and the person to whom they were paid.
3. Information may be provided under subsection (2) only
 - a) in connection with the administration of this Act and the regulations or the *Canada Health Act*;
 - b) in connection with proceedings under this Act or the regulations;
 - c) to the medical practitioner who provided the insured services or the solicitor, personal representative or other legal representative of the medical practitioner;
 - d) to the person who received the insured services or the solicitor, personal representative or other legal representative of that person;
 - e) in connection with proceedings under the *Medical Profession Act*; or
 - f) with the consent of the Director, to the statutory body of which a medical practitioner who rendered insured services is a member where the information is to be used for investigating a complaint or for disciplinary action against the medical practitioner or other member of the statutory body.
4. Information given under paragraph (3)(e) or (f) may include, if requested, any diagnosis given or made by a medical practitioner in respect of whom a complaint has been made or disciplinary proceedings taken.
5. Notwithstanding anything in this Act, the Director may provide information obtained under this Act and the regulations
 - a) to a person engaged in bona fide research for scientific purposes; or

- b) to improve the administration of this Act, but no information so obtained shall be published or otherwise made public except with the approval of the Director and only in a form that does not reveal the names of individuals

NWT Healthcare relies on these provisions to justify the refusal to provide the information requested.

The SRHB points to section 4 of the Access to Information and Protection of Privacy Act, which states as follows:

1. The head of a public body shall refuse to disclose information to an applicant where the disclosure is prohibited or restricted by another Act or regulation under another Act.
2. If a provision of this Act is inconsistent with or in conflict with a provision of another Act, the provisions of this Act prevail unless the other Act expressly provided that it, or a provision of it, prevails notwithstanding this Act.
3. Three years after the date on which section 5 comes into force, subsection (1) is repealed and subsection (2) comes into effect.

The SRHB argues that subsection (2) of the act is now in effect and that, unless the *Medical Health Care Act* contains a specific provision that its provisions prevail over the *Access to Information and Protection of Privacy (ATIPP) Act*, the ATIPP Act must prevail. They further point to section 48 of the Act which sets out a number of exceptions to the privacy provisions of the Act. Section 48 reads, in part:

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;

- (c) for the purpose of enforcing a legal right that the Government of the Northwest Territories or a public body has against any person;
- (d) for the purpose of
 - (i) collecting a fine or debt owed by an individual to the Government of the Northwest Territories or a public body, or
 - (ii) making a payment owed to an individual by the Government of the Northwest Territories or a public body;

DISCUSSION

As a preliminary comment, it must be noted that section 33(2) of the ATIPP Act provides that "on a review of a decision to refuse an applicant access to all or part of a record that contains personal information about a third party, the onus is on the applicant to establish that disclosure of the information would not be contrary to this Act or the regulations". Thus, in this case, the burden is on the SRHB to show it is entitled to receive the personal information of the third parties.

The next question becomes whether the provisions of the *Medical Health Care Act* are in conflict with the provisions of the *Access to Information and Protection of Privacy Act* and, if so, which of the two prevails.

Subsection 4(2) of the ATIPP Act provides that it overrides other legislation, unless the other legislation specifically provides otherwise. To a point, the provisions of the *Medical Health Care Act* and the ATIPP Act are very similar when it comes to provisions dealing with protection of third party privacy. The ATIPP Act, however, provides exceptions to the "privacy protections" which are not present in the *Medical Health Care Act*. Nor is there anything in the *Medical Health Care Act* which specifically ousts the precedence of the ATIPP Act. In such a case, section 4(2) of the ATIPP Act

provides that its provisions apply where there is a conflict. Section 48 of the ATIPP Act must be applied to the request for information.

It is to be noted that in reviewing these issues, I am not engaged in a balancing of access and privacy interests. Rather, my responsibility is to ensure that the rights and obligations set out in the Act are respected and complied with. This balance, though sometimes difficult to achieve, was provided for specifically in the ATIPP Act, and, in particular, included some specific exceptions to the privacy provisions which appear in section 48.

In my opinion, the information in question in this case does fall within one of the exceptions outlined in section 48 and may fall under several of them.

Section 4(d)(i) clearly allows the release of personal third party information for the purpose of collecting a fine or a debt owed by an individual to the Government of the Northwest Territories or a public body. SRHB, itself a public body, is owed money by certain individuals. Another public body, NWT Health Care, has the information that would assist in collecting those debts. The Act clearly and unequivocally provides for an exception to the protection of third party personal information in such circumstances. I would, therefore, recommend that the information requested by the SRHB be provided to them, with the stipulation that the information is to be used solely for that purpose. Although the application of section 48(d) dispenses with the matter, there are other subsections of section 48 which may also apply.

Section 48(a) allows personal third party information to be disclosed for the purpose it was collected or compiled or for a use consistent with that purpose. Unfortunately, it is not entirely clear from the information before me the reason that NWT Healthcare receives the forwarding addresses from other jurisdictions. One can assume that it is to avoid "double dipping" but it may well also be to allow for follow up for exactly the purposes for which the SRHB wants the information. Without a copy of the agreements

by which the various governments exchange this information, it is impossible for me to say that the way SRHB intends to use the information is or is not a "consistent purpose". I think, however, it is incumbent on NWT Health Care to review those agreements carefully to determine specifically what the "purpose" of exchanging this information is. But for the fact that it is clear that section 48(d) allows for the use or disclosure of the information in question as set out above, I would ask NWT Health Care to provide me with copies of the relevant bilateral agreements for my review to carefully determine the "purpose" for which the information was collected or compiled and consider whether the suggested purpose is "consistent".

Section 48(b) also provides for that personal third party information can be disclosed where consent has been given to the disclosure. Again, without more specific information about the actual consent signed by each of the individuals involved when applying for health care in another jurisdiction, it is impossible to say whether or not specific consent for the use of this information for the purpose of collecting debts owing to a government agency has been given. It may well have been. We don't know.

Again, if it were not for my recommendation under section 48(c), I would ask NWT Health Care to look further into this question.

SUMMARY AND RECOMMENDATION:

Section 4(2) of the *Access to Information and Protection of Privacy Act* provides that, to the extent that its provisions are inconsistent with access or privacy provisions in another piece of legislation, the *Access to Information and Protection of Privacy Act* will prevail unless there are specific provisions in the other legislation to the contrary. In this case, there are no such specific provisions ousting the precedence of the ATIPP Act and, for that reason, the privacy protections of the *Medical Health Care Act* must be read subject to the exceptions set out in Section 48. As the information in question is

being requested for the purpose of collecting a debt owing to the Government of the Northwest Territories, the exception contained in section 48(d) applies and the information should be released to the Applicant with the proviso, however, that it be used only for the purpose stated, that is, to collect debts owing to the SRHB.

Elaine Keenan Bengts
Information and Privacy Commissioner