

**NORTHWEST TERRITORIES  
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 16-144

File: 15-158-4

June 25, 2016

**BACKGROUND**

This matter arose as a result of a privacy complaint received from a tenant of a housing authority in the Northwest Territories. Essentially, the complainant felt that the housing authority was disclosing to his neighbours that he been complaining to the landlord about other tenants and calling the police. He says this happened on at least three different occasions.

The first incident occurred in early May, 2015. The Complainant filed a report about noise, significant enough to wake up both adults and children in the Complainant's unit, coming from a neighbour's home at 2:00 in the morning. The Complainant later received records from the landlord about the incident which indicated that the landlord followed up on the complaint and spoke to the neighbour about the incident and got his side of the story. The Complainant noted that the landlord "had to tell them about my complaint to ask them about the complaint" and he considers this to have been a breach of his privacy.

The second incident occurred at the end of May when, once again, the Complainant filed a report about noise coming from a neighbour's home in the middle of the night. This time, the Complainant was so upset about the noise that he called the police three times during the course of the night and, each time, the R.C.M.P. responded. Again, the landlord's notes of this incident say that the landlord "contacted the R.C.M.P. to verify the complaints". The Complainant says that at no time did they consent to having the landlord speak to the R.C.M.P. about them.

The third incident was in early June, when the Complainant filed a complaint about garbage being thrown in his yard by a neighbour. Once again, the landlord appears to

have followed up and spoken with the neighbour about the complaint, and the Complainant feels that this was a breach of his privacy.

## **PRELIMINARY ISSUE**

As has been noted in previous Recommendations, none of the Housing Authorities in the Northwest Territories are listed as “public bodies” in the Regulations to the *Access to Information and Protection of Privacy Act*. The Northwest Territories Housing Corporation (NWT HC) is, however, named in the Regulations as a public body. I have in the past taken the position that the relationship between the NWT HC and the housing authorities is such that the NWT HC is responsible for ensuring that housing authorities comply with the *Access to Information and Protection of Privacy Act* (ATIPPA). In this case, the housing authority agreed to participate in my review and the issue, in this case is, therefore moot.

## **THE HOUSING AUTHORITY’S RESPONSE**

The Housing Authority provided me with a copy of their policy with respect to Confidentiality of Client Information. That policy recognizes that all Local Housing Organizations (LHOs) are subject to the *Access to Information and Protection of Privacy Act*. It goes on to say that employees owe a duty of confidence to clients and applicants dealing with the organization. In part, the policy notes:

LHO employees must not disclose private information about clients or applicants which could result in embarrassment, defamation of character or cause harm.

It goes on to say:

Confidential information shall be identified and marked as such. LHO employees may also need to keep the confidential information separate

from the tenant file itself (e.g., notes identifying another tenant or another person who has provided information on a complaint regarding noise or damage to the unit).

Confidential information shall be protected in the following ways. The Tenant Relations Officer (TRO) shall:

- a. never share confidential information with anyone who does not have the right to know. If in doubt, the TRO shall check with the LHO Manager.
- b. When in doubt, the TRO shall obtain the tenant's consent to share information by having them fill out a Third Party Consent to Release of Information form (see Appendix A).
- c. Handle confidential papers very carefully.
- d. Immediately file any notes or any written material.
- e. Not leave any confidential information on his/her desk while s/he is away from it.
- f. Check the photocopier after copying confidential material to be sure the original has not been left behind.
- g. Shred or tear copies before throwing them in the garbage.

In the first incident noted above, the landlord advises that it had just received and dealt with a similar complaint from a third party about the same tenants the Complainant was concerned about. As a result, the landlord chose not to investigate this complaint. They say “no action was taken and the tenants were not informed of a complaint in this

instance”. This is borne out by the notes made at the time of the incident, which were provided to me to assist me in my review.

With respect to the second incident, the Housing Authority confirms that an employee talked with the R.C.M.P., but only to verify that they had been called to attend that unit. They say that no mention was made of any names during that discussion nor was the name of the Complainant revealed either by the R.C.M.P. or by the housing authority employee. As a result of this complaint, however, the tenant against whom the complaint had been made was given a final notice with respect to noise and possible eviction if it were to happen again. No information in that notice identified the Complainant or made any statements that would serve in any way to identify the Complainant as the person who had called the police. It simply said that “complaints have been received regarding a disturbance at your unit” and “there was a fight and a lot of banging in your unit. The R.C.M.P. had to be called. This disturbed tenants in the residential complex.”

With respect to the third incident, in which the complaint was about trash being thrown in the Complainant’s yard, the landlord “did discuss the situation with the neighbour” but that at no time was the Complainant identified. The tenant agreed to clean up the garbage.

The landlord points out that it is required under the *Residential Tenancies Act* to investigate and “take appropriate action” when one tenant files a complaint or raises a concern about another tenant. It was simply doing what was required of it by law (and as a good landlord) in investigating the complaints received. That said, they took all precautions possible not to disclose the identity of the Complainant. Because it is a small complex, however, it is possible that the neighbour was able to deduce or to make accurate assumptions about who had made the complaints.

## DISCUSSION

Section 43 of the *Access to Information and Protection of Privacy Act* provides for how public bodies can use personal information that it collects:

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.

Division C of the Act sets out rules for when personal information can be disclosed, including:

- a) for the purpose of enforcing a legal right that the Government of the Northwest Territories or a public body has against any person;
- b) for any purpose in accordance with any Act that authorizes or requires the disclosure.

Section 44 of the *Residential Tenancies Act* requires a landlord to investigate complaints by one tenant against another:

44. (1) Where a tenant informs his or her landlord that the tenant has been affected by another tenant's breach of the obligation imposed by subsection 43(1), the landlord shall inquire into the complaint and take appropriate action, including the making of an application under subsection 43(3).

As I read all of these provisions together, it seems to me that a complaint submitted to a landlord by one tenant against another for activity that disturbs the complaining tenant's right to peaceful enjoyment of his or her accommodations creates a positive duty on the landlord pursuant to section 44 of the *Residential Tenancies Act* to investigate and take appropriate action. The landlord did just that in all three cases noted. There is no indication that the landlord ever used the Complainant's name or referred to the Complainant's unit number when investigating the complaints except on the third complaint about the garbage. Clearly the Complainant's unit was identified in the third incident, as the garbage that the tenant agreed to pick up was in the Complainant's yard. In the circumstances, the landlord did the best they could to keep the Complainant's identity out of the investigative process. In a small residential complex, however, even the smallest hints can serve to identify, or at least provide good hints about who has been doing the complaining. I applaud the landlord's efforts to maintain the tenant's confidentiality and encourage them to continue to do so in similar circumstances. However, in the event that they are not able to fully protect the identity of the complainant, as in this case, section 44 of the *Residential Tenancies Act* and section 48 of the *Access to Information and Protection of Privacy Act* combine to protect the landlord from culpability. In particular, in this case the information collected was for the purpose of dealing with a tenant complaint and is, therefore, being used for the purpose it was collected. The information was used/disclosed for the purpose of investigating the complaint, which is an action required of the landlord pursuant to section 44 of the *Residential Tenancies Act*.

In the circumstances, I believe that the landlord acted appropriately and did not directly identify the Complainant as the complainant in each of the three incidents outlined. There was no disclosure made to the R.C.M.P. in the second instance. The landlord asked if complaints had been made and the R.C.M.P. confirmed that there had been such complaints. There is no evidence that names or other identifying information was exchanged between the landlord and the R.C.M.P.

The only thing I might suggest is that the landlord inform tenants, either at the time of signing their leases, in the tenant's handbook if there is one, or in newsletters or other

general mail-outs that while the landlord will do everything possible to maintain the confidentiality of a tenant who files a complaint against another tenant, in some cases it may be impossible to investigate the incident without inadvertently disclosing information which may serve to identify where the complaint came from.

## **CONCLUSIONS AND RECOMMENDATIONS**

In the circumstances, it appears to me that the landlord did pretty much everything it could to protect the identity of the complainant. There is no actual evidence to suggest that the tenant complained about actually knew who made the complaints against him. It is very possible, however, that he was able to make some educated guesses and draw some conclusions. These things will, unfortunately, happen in a small community where it is easy to deduce one piece of information simply by means of observation. I make no recommendations but encourage the landlord to continue to take steps to protect the identity of complainants whenever possible.

Elaine Keenan Bengts  
**Information and Privacy Commissioner**