

**Yukon Ombudsman - Report after Investigation**  
*Ombudsman Act section 31(2)*  
**December 6, 2010**

**Re: Complaints to the Ombudsman – Health Care Insurance Survey**  
**Authorities: Health and Social Services; and Yukon Bureau of Statistics**

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**The Investigation**

The Yukon Bureau of Statistics (YBS) and Department of Health and Social Services, Insured Health and Hearing Services (the Department) have for many years conducted a joint survey of health care insurance recipients. In the spring of 2010, the YBS mailed out a survey to 5113 Yukoners. The recipients were asked to complete the survey form and return it to the YBS. Both the cover letter and the survey form titled “Yukon Health Care Insurance Plan Update” contained a statement in large bold letters that “IF YOU DO NOT SIGN AND RETURN THIS CARD YOUR HEALTH CARE COULD BE CANCELLED.

The Yukon Ombudsman was contacted by several complainants who questioned the connection between completing the survey form and cancellation of their health care insurance coverage.

The Ombudsman reviewed that matter and decided to investigate. The investigation considered the law authorizing surveys and the connection between the survey and cancellation of health care insurance coverage.

**The Survey**

The Department made a written request to the YBS to undertake a joint survey project. The request was for YBS to mail out ‘update cards’ to a number of health care insurance plan subscribers. The Department also requested that YBS prepare and send it a list of “suspected non-residents” or “non-respondents”.

Several months after the mail out, YBS provided the Department with a photocopy of each of the returned survey response cards. YBS also produced and provided a list identifying the name, address and health care registration number of anyone who did not return the survey or for whom the survey card was returned to sender. The list contained the names, addresses and some other personal information of approximately 300 people. The individuals on that list were categorized by the Department as subscribers suspected of no longer living in the Yukon.

The Department used the returned survey forms to update individual health care insurance files. The Department reviewed the files of those individuals on the list of non-respondents. If that person had not filed a temporary absence form, change of address form or been to a health care professional in the past year, their health care insurance was cancelled. The Department did not notify the person of the cancellation. A person would

likely not learn of the cancellation of their health care insurance coverage until the next time they tried to access an insured health care service.

If upon learning their health care insurance was cancelled, an individual contacted the Department, they would be told the health care insurance coverage was cancelled as a result of failing to return the survey response card. If the individual could confirm to the Department's satisfaction, that he or she was resident in the Yukon, their insurance coverage was reinstated.

### **Failure to Comply with the *Statistics Act***

The *Statistics Act* authorizes YBS to conduct surveys in collaboration with a department. The legislation also specifies how a survey must be conducted when personal information is to be collected and shared with the department. The Yukon Health Care Update Survey did not meet the requirements for conducting a joint survey of this nature in two respects.

First, the *Statistics Act* requires a data sharing agreement to be in place between YBS and the Department before undertaking a survey. The YBS and the Department did not have a data sharing agreement in place that met the requirements in the Act.

Second, if YBS intends, through the survey, to collect personal information that identifies an individual and share it with the Department, it must notify the survey recipient of certain facts including that:

- their personal information would be shared with the Department;
- they can object to their personal information being shared with the Department; and
- if they object, their personal information cannot be shared with the Department.

The survey cover letter and the survey form itself did inform recipients that the information would be shared with the Department. It did not, however, inform recipients that they could object to the sharing of their personal information.

YBS and the Department did not have a proper data sharing agreement in place and did not give to survey recipients the required notice of their ability to object to the sharing of personal information. As a result, the survey was not carried out in compliance with the law. Consequently, YBS was not authorized to provide the Department with a photocopy of each survey response card or a list of recipients who did not return the survey.

While the ultimate power to interpret and apply laws lies with courts, the Ombudsman is legally authorized and required to consider whether or not an action of government is contrary to law. (*Ombudsman Act* section 23(1)(a)(i))

In this case, YBS and the Department contravened the law by conducting a joint survey and sharing personal information collected through the survey when the survey was not conducted in strict compliance with the *Statistics Act*.

### **Cancellation of Health Care Insurance Coverage**

A troubling aspect of this survey was the statement that failure to return the survey could result in cancellation of health care insurance. This statement is problematic for two reasons.

First, this was a voluntary survey. An individual could choose whether or not to complete and return the survey. Yet he or she was confronted with the risk of having health care insurance coverage cancelled if they did not return it. The survey should not have contained the statement that an individual's health care insurance coverage could be cancelled as a result of not returning the survey. Whatever the intent of including that statement, some survey recipients clearly saw it as a threat. This undermined the voluntary nature of the survey.

Second, the Department used the list of non-respondents to the survey to identify persons suspected of no longer living in the Yukon, reviewed their files for recent activity and, if none, cancelled their health care insurance coverage.

The somewhat absurd result is that an eligible Yukon resident, who had not changed their address, had not been to see a health care professional in the past year, and decided not to complete a voluntary survey, would have had their health care coverage cancelled.

The Department suggested this approach did little harm. To their knowledge no one who was entitled to insurance was actually denied health care and only a small group of people were inconvenienced by having to attend at the Department to provide evidence of Yukon residency and have their health care insurance reinstated. This is missing the point. Cancellation of health care insurance is not an available penalty for failing to respond to a voluntary survey under the *Statistics Act*.

### **Recommendations**

Having found that the survey was conducted contrary to law, the Ombudsman made the following recommendations pursuant to section 23(2)(b) of the *Ombudsman Act*:

#### Future Surveys

Both YBS and the Department have committed to ensuring that all future joint surveys will be conducted in strict compliance with the legal requirements of the *Statistics Act*.

#### Reinstating Health Care Insurance Coverage

The Department has already used the information provided by YBS to update files. It is not in the public interest, at this point in time, to require YBS to retrieve the information or require the Department to remove the updates from their files. However, to remedy the fact that some individuals may have had their health care insurance terminated as a result of the survey, the Ombudsman recommended that the Department:

1. Immediately give written notice to all individuals whose health coverage remains revoked as a result of failing to complete the April 2010 Health Care Insurance survey.
2. If an individual's coverage was terminated as a result of failing to complete the survey, and they can satisfy the Yukon residency requirements of the *Health Care Insurance Plan Act*, the Department shall reinstate health care insurance coverage retroactive to the date that the coverage was terminated.

Both the Yukon Bureau of Statistics and the Department of Health and Social Services have accepted and will implement the recommendations made as a result of this investigation.

The Yukon Bureau of Statistics and Health and Social Services cooperated fully with the investigation. In the course of the investigation it was apparent that both the YBS and the Department staff were acting in good faith.

### **Lessons Learned**

In the complex business of delivering government services, it is sometimes easy to be comfortable with doing something "the way it's always been done." YBS and Department have been collaborating to conduct a similar health survey twice a year for many years. The annual survey continued each year, in a similar manner, without considering the implications of the *Statistics Act* on the requirements for a survey of this nature.

The important reminder from this situation is that departments have a responsibility to ensure that any activity undertaken is in strict compliance with the legislation. It is not sufficient when undertaking an activity to simply rely on a past practice. This case demonstrates the need for departments to be proactive and in every case consider the legislation that authorizes an activity, to ensure it is conducted in strict compliance with the law.

Tracy-Anne McPhee  
Ombudsman

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