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## ***Access to Information and Protection of Privacy Act***

### **INVESTIGATION REPORT**

**File ATP14-058AI**

**Parties:** Health & Social Services and the Complainant

**Date:** July 15, 2015

**Provisions:** 36

#### **Complaint**

The Complainant, a former Yukon Government employee, alleged that records containing the personal information of Health & Social Services (HSS) clients had been disclosed to her by HSS contrary to the requirements of the *Access to Information and Protection of Privacy Act* (ATIPP Act).

#### **Explanatory Note**

All section references in this Investigation Report (Report) are to the ATIPP Act unless otherwise stated.

#### **Jurisdiction**

I have authority under subsection 42(b) to receive complaints from the public concerning the administration of the ATIPP Act, conduct investigations into those complaints and report on those investigations.

#### **Background Facts**

In October 2014, HSS Human Resources (HSS HR) completed a leave audit with respect to the Complainant's leave following her employment with HSS. A binder of leave audit records (Binder

of Records) was compiled in the course of the leave audit. Many records in the Binder of Records contained HSS clients' personal information.

The normal practice according to both the Manager of Information and Records and the Director of Human Resources is to provide any records being disclosed to an employee in respect of a leave audit to the Manager of Information and Records for review and redaction prior to disclosure to an employee to prevent unauthorized disclosure of another individual's personal information. The Binder of Records was not provided to the Manager of Information and Records for redaction.

The Complainant requested a meeting with HSS HR to review the records related to the leave audit. A copy of the Binder of Records was made for the Complainant. The anticipated meeting did not take place so HSS HR decided to mail by registered mail a copy of the Binder of Records to the Complainant. The unredacted Binder of Records was picked up by the Complainant on October 28, 2014.

## **Issues**

The only issue to be addressed in this investigation is:

- 1. Did HSS disclose HSS clients' personal information to the Complainant contrary to the requirements of the ATIPP Act?***

## **Analysis**

Part 3 of the ATIPP Act sets out the requirements a public body must to adhere when collecting, using or disclosing personal information. HSS is a public body under the ATIPP Act and is, therefore, obligated to comply with Part 3 of the ATIPP Act.

Personal information is defined in the ATIPP Act as "personal information about an identifiable individual". The leave audit records are in the custody or control of HSS. HSS acknowledges that the Binder of Records disclosed by HSS to the Complainant contain the personal information of other individuals. Based on my review of the records, I agree.

HSS also acknowledges it had no authority under section 36 to disclose the HSS clients' personal information to the Complainant and by doing so breached the privacy of the other individuals whose personal information was contained in the records. I also agree with HSS's conclusion on this point as I see no provision of section 36 that would authorize HSS to disclose this information to the Complainant.

In order to properly evaluate the breach, HSS agreed to follow its Privacy Breach Protocol in relation to the breach, complete a Privacy Breach Report, and submit it to my Office for review and comment. It also agreed to take steps to have the Complainant return the records containing third party personal information in exchange for redacted.

To prevent recurrence of a similar breach HSS agreed to formalize its procedure to ensure that other individuals' personal information is not improperly disclosed to former employees when records are provided post-employment.

### **Conclusion and Recommendations**

For the reasons stated above, in my opinion, HSS was not authorized to disclose HSS clients' personal information to the Complainant and in doing so violated section 36 of the ATIPPA Act.

Given the agreements by HSS stated above, I recommend the following.

- 1. HSS follow its Privacy Breach Protocol in relation to the breach, complete a Privacy Breach Report, and submit the Report to my Office for my review and comment by September 8, 2015.***
- 2. HSS formalize the procedure for disclosure of records to a former employee to ensure that prior to disclosure the personal information of individuals other than the employee is redacted from the records and provide me with a copy of the procedure by December 31, 2015.***

Diane McLeod-McKay  
Information and Privacy Commissioner

### ***Post Script:***

The Complainant in this case signed an Oath of Allegiance to the Queen and Oath of Office and Secrecy upon her employment with HSS. It is my understanding that HSS has tried to recover the unredacted records from this former employee and has, despite the Oaths sworn, been unsuccessful. I often hear from employees of public bodies that reliance on the Oaths sworn by employees of public bodies is sufficient to protect personal information from unauthorized access or disclosure. This case highlights that while Oaths sworn are important and can serve to discourage unauthorized access and disclosure of personal information, it is not enough. Properly securing personal information requires a combination of controls including privacy policies, procedures and training. If HSS had an effective privacy management program, the employees in this case would have been aware of their responsibilities regarding privacy protection and this breach may not have occurred.