



Yukon
Information
and Privacy
Commissioner

211 Hawkins Street, Suite 201
Whitehorse, Yukon Y1A 1X3
T: 867.667.8468
F: 867.667.8469
1-800-661-0408 ext. 8468
www.ombudsman.yk.ca

Access to Information and Protection of Privacy Act

FINAL INVESTIGATION REPORT

File ATP14-049AI

Parties: Department of Justice and the Complainant

Date: August 24, 2015

Provisions: 36

Complaint

On September 30, 2014, the Office of the Information and Privacy Commissioner received a complaint from a Complainant alleging that his personal information was disclosed without authorization to a lawyer in the Legal Services Branch of the Department of Justice (Justice Lawyer) by Whitehorse Correctional Centre (WCC), also within the Department of Justice (Justice), contrary to the *Access to Information and Protection of Privacy Act* (ATIPP Act). The Complainant also alleged that WCC disclosed the personal information of another inmate to the Justice Lawyer and the Yukon Human Rights Commission (YHRC) in violation of the 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 or comments from the public concerning the administration of the ATIPP Act, conduct investigations into those complaints and report on those investigations.

Background

On July 24, 2014, the Deputy Minister of Justice was informed by the YHRC that it had received a complaint from the Complainant that warranted further investigation. The Justice Lawyer, whose client was Justice, wrote to the YHRC on August 22, 2014, “Could you please provide us with a consent to release from [the Complainant] or a copy of the records if [the Complainant] has them?”

On August 28, 2014, the YHRC requested from WCC a copy of the Complainant’s medical records. Included with the letter was a copy of the consent form signed by the Complainant which stated:

I, [the Complainant], consent to the release to the Yukon Human Rights Commission of all information and documents relevant to my human rights complaint, such as personnel records, documents, data, medical and hospital records.

I also authorize the Yukon Human Rights Commission to discuss the allegations outlined in my complaint with WCC and have any information examined by any person it retains to provide expert advice and assistance.

On September 2, 2014, WCC received the letter and consent form.

On September 3, 2014, the Director of Corrections sent an email, as part of an email chain, to the Justice Lawyer, a WCC employee and the Superintendent which directed the WCC employee to “...have [the Complainant’s] medical file copied and get it down to [Justice Lawyer] please. I will forward the release to you.” In reply, the Justice Lawyer said “Would it be faster for you to send the file directly to the YHRC?”

On September 3, 2014, the records were prepared for delivery by WCC. Only two WCC employees could have prepared the records. One of those two specifically recalls he did not prepare the records; the other couldn’t remember. The WCC employee who couldn’t remember preparing the records said that his practice when preparing any inmate records for delivery outside WCC is as follows:

- the records are copied and placed into an envelope or packaged using a wrapper from a new package of legal sized photocopying paper along with a copy of the original request placed on top of the records;
- If put into an envelope:

- in most cases it would be licked, sealed and taped shut and a label affixed with the name and address of the person to whom the envelope or wrapped package is to be delivered along with a file number or some other description to identify the content; and
- he would usually handwrite under the preprinted Yukon Government logo in the left corner of the government issued envelope “[his last name] and J-4” .
- The envelope or wrapped package would be hand delivered to the intended recipient.

That WCC employee indicated that, as it relates to the delivery of the Complainant’s records to the Justice Lawyer, “If I delivered it, which is highly likely, I would have given it to the receptionist [of Legal Services]. In most cases the lawyer is unavailable when I drop things off.”

On September 3, 2014, the Justice Lawyer hand delivered the Complainant’s medical records to the YHRC. The envelope in which the records were delivered was double sealed on the flap with glue and tape. The return address added in handwriting to the preprinted Yukon Government address and logo was “J-2.” J-2 is the mail code for Justice’s Legal Services, which is different from WCC’s mail code, J-4.

Although the records were delivered by the Justice Lawyer to the YHRC, Legal Services employees had no recollection of handling the records. The mail log used by Legal Services to record incoming and outgoing mail had no entry that the records were received from WCC on September 3, 2014. The Justice Lawyer’s secretary indicated, however, that the “J-2” on the envelope in which the medical records were delivered is her handwriting.

The YHRC made a notation on the envelope “dropped off by [Justice Lawyer] on Sept. 3/14”. Attached to the outside of the envelope containing the records was a letter to the YHRC from the Justice Lawyer saying “Enclosed are [the Complainant’s] medical records. We would appreciate receiving a copy at your convenience.” Inside the envelope were the Complainant’s medical records without any other envelope or wrapping. The YHRC reviewed the records received and identified three medical records containing the personal information of another inmate.

On September 8, 2014, the YHRC wrote to WCC indicating it had received three records of another inmate in error along with the Complainant’s medical records and that it had shredded the records of the other inmate and did not copy them or share them with anyone. The YHRC also questioned why WCC had “...inexplicably released the [Complainant’s medical records] not to the Commission as per our letter of August 28, 2014 and [the Complainant’s] accompanying signed release, but to your lawyer....”

The YHRC informed the Complainant that his personal health information was delivered by the Justice Lawyer to the YHRC. The Complainant was also informed that three medical records of another inmate were included with his medical records.

Under cover letter dated September 23, 2014, the YHRC, after receiving the Complainant's further consent, disclosed some of his medical records to the Justice Lawyer. These 35 records are the only records in the Legal Services' file.

Issues

The two issues to be addressed in this investigation are as follows:

- 1. Did WCC disclose the Complainant's personal information to the Justice Lawyer contrary to the requirements of the ATIPP Act?***
- 2. Did WCC disclose another inmate's personal information to the Justice Lawyer and the YHRC contrary to the requirements of the ATIPP Act?***

Analysis

Part 3 of the ATIPP Act sets out the requirements a public body must adhere to when collecting, using or disclosing personal information. Justice 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 medical records disclosed by WCC were records in the custody or control of Justice. Justice acknowledges that these medical records contained the personal information of the Complainant and another inmate. I agree.

Submissions by Justice:

Justice acknowledged that the sharing of personal health information of inmates incarcerated in WCC with a lawyer in Justice would constitute a disclosure of personal information under the ATIPP Act. Justice does not agree a disclosure occurred in this case. It says that if WCC had disclosed the Complainant's personal information to the Justice Lawyer there is:

...no problem releasing [the Complainant's] secure information via our legal counsel as [it believes] it is allowed under the ATIPP Act pursuant to s. 36(e), (f) and/or (g).

Justice also states:

Our legal counsel represents Corrections before the Human Rights Commission. It was totally reasonable for us to deliver the envelope of material, demanded by the YHRC (36(e)), to our counsel as part of her duties to represent (36(f)).

Justice agrees that it had made a disclosure of another inmate's personal information to the YHRC. After receiving notice about the records and finding that these three records were filed on the Complainant's medical record, the three records were removed.

1. Did WCC disclose the Complainant's personal information to the Justice Lawyer contrary to the requirements of the ATIPP Act?

Justice submits that WCC did not disclose the Complainant's personal information to the Justice Lawyer.

The evidence before me is that WCC prepared the Complainant's medical records for delivery and likely packaged the records in an envelope marked with WCC's return mail code, J-4, and delivered the envelope to Legal Services. No one in Legal Services recalls handling or opening the envelope and the mail log contains no entry regarding the envelope. The Justice Lawyer delivered the records to the YHRC in an envelope marked with Legal Services mail code, J-2, handwritten by the Justice Lawyer's secretary.

The evidence suggests that the Justice Lawyer's secretary received the envelope from WCC, opened the envelope revealing the contents of the records, and the Justice Lawyer's secretary or the Justice Lawyer placed the records into a new envelope prior to the Justice Lawyer delivering them to YHRC.

While this is what appears to have occurred, I am not prepared on this evidence to make a determination about whether the Complainant's records were in fact disclosed by WCC to the Justice Lawyer or her secretary. What I am able to determine from the facts in this case is that WCC and Legal Services need to develop better processes to ensure personal information is not disclosed in violation of the ATIPP Act. These processes need to include measures that will ensure that information is properly secured from unauthorized access or disclosure including during transit.

In my view, if Justice had a privacy management program that included employee training about their responsibilities under the ATIPP Act, employees would better understand what steps to take to avoid privacy breaches.

2. Did WCC disclose another inmate's personal information to the Justice Lawyer and the YHRC contrary to the requirements of the ATIPP Act?

Based on my prior comments, I am unable to determine if WCC disclosed another inmate's personal information to the Justice Lawyer or her secretary. I am able to determine, however, that WCC did disclose the three records of another inmate to the YHRC contrary to section 36. My determination is based on the evidence provided by YHRC that it received and destroyed three records of another inmate, WCC's agreement that it disclosed these records to the YHRC without authorization under section 36, and WCC's acknowledgement that these records were found on the Complainant's medical record at WCC.

Conclusion and Recommendation

For the foregoing reasons, my opinion in relation to the issues identified for investigation is as follows.

- There is insufficient evidence to determine if Justice disclosed the Complainant's personal information and the personal information of another inmate to the Justice Lawyer or her secretary contrary to section 36.
- Justice contravened section 36 when it disclosed three records containing the personal information of another inmate to the YHRC.

To remedy this contravention, I recommend the following.

1. Justice complete a privacy breach checklist which can be found on my office's website at [http://www.ombudsman.yk.ca/uploads/forms/Revised ATIPP Privacy Breach Checklist Sept 14.pdf](http://www.ombudsman.yk.ca/uploads/forms/Revised_ATIPP_Privacy_Breach_Checklist_Sept_14.pdf) in respect of the breach identified in this Report and provide a completed copy to my office for my comment by September 14, 2015.

Diane McLeod-McKay
Information and Privacy Commissioner

