

Issues

- [4] The issues in this review are:
- a. Was there a breach of the Complainant's privacy?
 - b. Is a T4 slip "personal information"?
 - c. Was there "disclosure" of the Complainant's T4 slip?
 - d. If so, was the disclosure authorized by law?

Facts

- [5] The Complainant was an employee of the Government of Nunavut. Their employment ended in 2018, and they moved to another jurisdiction.
- [6] The Complainant, like any employee, expected to receive their T4 tax slip for the 2018 taxation year before the end of February 2019. They communicated several times with GN employees about the tax slip.
- [7] The T4 slip was first mailed, by regular mail, to the Complainant's address in the community where they had been employed. The Complainant no longer lived there, and the envelope was eventually returned to the GN.
- [8] The T4 slip was then mailed, by regular mail, to the Complainant's new address in another jurisdiction. The Complainant says they never received this envelope. This envelope was not returned to the GN.
- [9] The Complainant also indicated to GN staff that they could send the T4 by e-mail, but that did not happen.
- [10] The Complainant says that they did not realize, until informed by an accountant some time later, that they could have downloaded the T4 from the Canada Revenue Agency website. The CRA advised the Complainant that the GN had uploaded the T4 in February 2019.
- [11] After their employment ended, the Complainant was involved in a grievance procedure with respect to their employment. The substance of

the grievance(s) is not relevant to this privacy review. The Complainant was represented in the grievance process by their union.

- [12] On August 2, 2019, as part of the process of attempting to work out a settlement of the grievance(s), the Complainant wrote an e-mail to their union rep in which the Complainant mentioned (among other things) the fact of the missing T4. This was an irritant to the Complainant. The missing T4 was also mentioned by the Complainant in subsequent e-mails.
- [13] The Complainant's union representative brought to the GN lawyer's attention the fact of the missing T4. The exact timing and content of that conversation is not known.
- [14] On November 14, 2019, the union rep wrote in an e-mail to the Complainant, "I have your T4". The T4 was in password-protected PDF format. The union rep also gave the Complainant the password.
- [15] On November 29, 2019, the Complainant raised with the union rep the question of whether it was a breach of privacy for the T4 to have been delivered the way it was.
- [16] The Complainant filed a request for review with the Information and Privacy Commissioner on May 4, 2020. The central allegation is that the Complainant's privacy was breached by the manner in which the T4 was ultimately delivered to them.

Law

- [17] "Personal information" means any information about an identifiable individual, including an identifying number or an individual's financial history: ATIPPA, s 2, "personal information", paragraphs (d) and (g).
- [18] Personal information may be disclosed only in accordance with the access provisions (which do not apply here) or sections 48, 48.1 or 49: ATIPPA, s 47.

[19] The most relevant part of s 48 is paragraph (g): “A public body may disclose personal information... (g) for the purpose of hiring, managing or administering personnel of the Government of Nunavut or a public body”.

Analysis

[20] This case raises questions about how the GN delivers sensitive personal information to its employees, especially former employees who can no longer be reached in the workplace and who may have moved.

[21] In this case, the former employee’s T4 tax slip took too long to get to them, and reached them by an unusual route; but looked at in its full context, the manner in which the T4 was delivered to the Complainant was not a breach of privacy.

Is a T4 “personal information”?

[22] There can be no question that a T4 slip is “personal information” within the meaning of ATIPPA. It is about an identifiable individual; it includes the employee’s Social Insurance Number; and it gives a year’s worth of financial information about the employee.

Was there a breach of privacy?

[23] The main issue in this review is whether the Department of Finance (or anyone else in the GN involved in the file) disclosed the Complainant’s personal information in a way or for a purpose not permitted by the ATIPPA s 48. To put it in simpler language: was the Complainant’s privacy breached when their T4 slip passed through multiple hands before it got to them?

[24] To determine whether there was a privacy breach, there are two questions I have to answer: (1) Was there a disclosure within the meaning of s 48?, and (2) If there was a disclosure, was it for one of the authorized purposes in s 48?

- [25] Before turning to those questions, I will describe the grievance process and the chain of communication that was implicit in the grievance process.

The grievance process

- [26] After the Complainant's employment with the GN ended, one or more grievances survived. The process was a long one, involving a mediation, negotiation of a settlement, and negotiation of a supplementary settlement. The process was ongoing at all times relevant to the T4 issue.
- [27] The details of the grievance are not relevant to this review; in fact I am not aware of the precise nature of the grievance(s). It is enough to say that the Complainant left the employment of the GN in circumstances that left many details to be worked out between the Complainant and the GN.
- [28] The Complainant was represented in the grievance process by a union representative. The representative, a lawyer, is employed by the Complainant's union. The Complainant puts some weight on the fact that the union lawyer is technically not the Complainant's lawyer, but nothing turns on that point. Unions provide representation to their members so that members do not have to hire their own. The union lawyer was the Complainant's representative throughout the grievance process. All communication with the GN concerning the grievance was through the union lawyer.
- [29] The GN, in turn, was represented in the grievance process by its own lawyer. The Complainant puts some weight on the fact that the GN lawyer was in private practice, but again, nothing turns on that point. The GN may choose its lawyer and may share all relevant information with its lawyer.
- [30] The GN lawyer's contact within the GN was an employee relations consultant (ERC). The ERC was the "point person" within the GN for management of the grievance(s), which would include doing what was necessary to bring the grievance(s) to a successful conclusion.

- [31] It is normal, in any legal proceeding in which lawyers are involved, for the lawyers to communicate only with each other. They have an ethical obligation not to communicate directly with the other side's client. The lawyers, in turn, "take instructions" from the client, or where the client is a corporate body like the GN, from an authorized representative of the client.
- [32] The GN side of the Complainant's grievance process was set up in a normal way. On the GN side, it was an efficient way for the GN to organize itself for purposes of the Complainant's grievance. The grievance process itself, including negotiations towards settlement, is an integral part of "managing or administering" personnel of the GN: ATIPPA, s 48(g).
- [33] I have no comment on how matters were arranged between the Complainant and the union rep. It is not my business to do so. They are outside the scope of ATIPPA.

The communication chain

- [34] Piecing everything together, and making reasonable inferences where direct evidence is lacking, I would make the following findings about the route taken by the T4 slip:
- a. The Complainant raised the issue of the missing T4 with their union rep, as an example of how the GN was not fulfilling its obligations. Every employer is required to provide their employees with T4 slips by the end of February. Long after the deadline, the Complainant did not have their T4. The Complainant had asked for the T4 to be sent by mail and e-mail, and still did not have it. (The Complainant did not, at this point, know what efforts the GN had made to get the T4 to them.) The Complainant had reason to be annoyed.
 - b. The Complainant did not give specific instructions to the union rep to try to get the T4. If the Complainant did, it was with the expectation that the T4 would be delivered directly to them, and not via the union rep. That expectation was not explicitly stated.

- c. The union rep believed that they were helping the Complainant by raising the T4 issue with the GN lawyer. All of the union rep's communications with the GN were through the GN lawyer—as was appropriate—and so the request for the T4 was made through the lawyer. We do not know exactly how that request was phrased.
- d. All of the GN lawyer's communications with the Complainant were through the union rep—as was appropriate—and so they took the union rep's request at face value. They passed along the request to the ERC. We do not know exactly how that request was phrased.
- e. The ERC then contacted the Department of Finance with the request for the T4. The Department of Finance produced the T4 in password-protected PDF format, and provided the digital document and password to the ERC, who gave them to the GN lawyer, who gave them to the union rep, who gave them to the Complainant.

[35] Everyone on the GN side of this chain of communication believed that the request for the T4 was coming from a duly-authorized representative of the Complainant, in the context of a grievance process, and that delivery to the union rep satisfied the request.

[36] After the Complainant received the T4 from the union rep, the Complainant indicated that they had not authorized the union rep to receive the T4 on their behalf. If the union rep was not authorized to handle the T4, then it followed that neither was the GN lawyer nor the ERC.

Was there a “disclosure”?

[37] A preliminary question is whether there was “disclosure” at all. It is undisputed that, apart from Finance staff, the Complainant's T4 was handled by the ERC, the GN lawyer, and the union rep. The T4 was in password-protected PDF format. It was passed along the chain with the password. There is no indication that any of the people who handled the T4 looked at it, but they could have if they wanted to.

- [38] Giving a document to someone for delivery is not, in itself, “disclosure”, assuming that reasonable and adequate security measures have been taken. Otherwise every document put in the mail, or given to a courier, or sent by air freight, would be “disclosed”.
- [39] In the context of a grievance process, in which the very structure of the process limits direct communication to one person on each side (the lawyers), it is implicit that information will have to pass along a chain of communication. In a typical grievance case, then, I would find that the mere delivery of information along the chain is not “disclosure”.
- [40] In this case, however, the document and the password were provided together. That is a poor data-security practice. The purpose of a password is to ensure that only the intended recipient can open a document. The purpose is defeated if others in the communication chain have access to both the document and the password.
- [41] The issuance of the T4 was relevant to the grievance process. Its contents were not. There must surely have been a way for the GN to separate the document from the password, and to deliver the password securely to the Complainant.
- [42] The disclosure in this case was a narrow one. The T4 could have been accessed by only three people, all of whom were involved in the grievance process, and two of whom were lawyers operating under a code of professional ethics. There is no evidence that any of the three actually looked at the T4. Nevertheless, disclosure includes the possibility of disclosure. The fact that the possibility of disclosure was limited and perhaps theoretical is relevant to my recommendations, but not to the finding that there was “disclosure”.

If there was a disclosure, was it authorized?

- [43] Assuming there was a disclosure, was the disclosure authorized under s 48 of ATIPPA? In my view, it was.
- [44] The context of this disclosure is important. The Complainant was involved in a grievance process with the GN. Both sides were represented by a lawyer. The request for the T4 came up in the context of settlement discussions, and came from the Complainant's side. The request was acted upon by the GN, and the T4 was passed to the Complainant via the union rep.
- [45] This grievance process may have been lengthy and complex, but there was nothing unusual about its structure or the way communications and information were flowing between the parties. As far the people on the GN side were concerned, they were doing what needed to be done to resolve the grievance(s) of a former employee. They were negotiating a resolution, and delivering the T4 was one of the details of that resolution. Since the request for the T4 was received by the GN through the grievance process, the GN delivered the T4 back through the grievance process. In context, that was a reasonable approach for Finance, the ERC, and the GN lawyer to take.
- [46] In my view, the structure and information flow involved in trying to resolve employment disputes fits comfortably within s 48(g) of the ATIPPA. A grievance process is part of the administration of a collective agreement, and administration of a collective agreement is part of "managing or administering" personnel. I find that any disclosure of information with respect to the T4 was authorized under s 48(g) of the ATIPPA.

Conclusion

- [47] The Complainant's T4 slip was "personal information".

- [48] There is normally no “disclosure” merely because information, reasonably and adequately protected, is put in the hands of someone else for delivery. However there was “disclosure” of the T4 slip when both the password-protected document and the password were delivered together and passed through several hands before getting to the Complainant.
- [49] In any event, the disclosure was, in the specific context of settlement discussions in a grievance process, authorized by s 48(g) of the ATIPPA.

Recommendations

- [50] Although I have found the disclosure in this case was authorized, I do have two recommendations flowing from my analysis.
- [51] The review request and this report would have been avoided if the Department of Finance had sent the first T4 to the correct mailing address, or if it had followed the Complainant’s instructions about where to e-mail it. **I recommend** the Department of Finance review its procedure for verifying the address of former employees to whom tax information must be mailed.
- [52] **I recommend** that the Department of Finance review any policy or protocol it has with respect to the delivery of confidential information, to clarify that it is a poor security practice to deliver a password-protected document and the password together, except directly into the hands of the intended recipient.

Graham Steele

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