



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report P-2018-005

August 29, 2018

### Human Resource Secretariat

#### Summary:

The Complainant alleged that Human Resource Secretariat (HRS) had breached his privacy by improperly collecting and disclosing his personal information to a third party. The complaint arose when HRS required his 2015 and 2016 Canada Revenue Agency Notice of Assessments (NOAs), (later just the RRSP assessment limit portion of the NOAs) in the course of accommodating the Complainant's request to have his severance allowance transferred directly by HRS to his RRSP account. HRS acknowledged it had not acted in accordance with the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)*, by improperly disclosing the Complainant's personal information to a third party and that it could do more in terms of reviewing information collection policies and the protections in place to safeguard personal information in its custody and control. The Commissioner concluded that HRS had breached the Complainant's privacy by improperly disclosing his personal information to a third party and inadequately protecting it. The Commissioner recommended improvements to HRS policies and procedures.

#### Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c.A1.2, sections 61, 64, and 68.

#### Other Resources:

[RRSP Contributions You Withhold from Remuneration.](#)

## I BACKGROUND

- [1] The Complainant submitted a privacy complaint to this Office alleging that the Human Resource Secretariat (HRS) breached the *Access to Information and Protection of Privacy Act* (the “*ATIPPA, 2015*”) by improperly collecting and disclosing his personal information to a third party. The Complainant also alleged that HRS had not adequately protected his personal information (pursuant to sections 61, 68 and 64 of the *ATIPPA, 2015* respectively). His allegations stemmed from HRS’s handling of his request for HRS to transfer his severance allowance directly to his RRSP account.
- [2] Relying on Canada Revenue Agency’s (“CRA”’s) direction to employers undertaking such transfers, HRS initially requested the Applicant’s 2015 Notice of Assessment (“NOA”), and later his 2016 NOA when completion of the transfer had not occurred before the tax deadline had passed.
- [3] The Applicant took issue with HRS’s attempts to collect his NOAs in full. Further communication occurred resulting in HRS agreeing to accept just the RRSP deduction limit portion of his NOA. The Applicant still believed this to be an improper collection of his personal information but agreed to provide it to HRS in an effort to complete the transaction.
- [4] HRS then proceeded to complete the transfer, and in so doing, released to the Applicant’s financial institution not just a cheque in the amount of his severance, but a full pay stub. After notification by the financial institution that it had received his pay stub, the Applicant complained to HRS that it had improperly disclosed his personal information to a third party (the financial institution).
- [5] The Applicant subsequently filed a complaint with this Office. As informal resolution was unsuccessful, a formal investigation proceeded in accordance with section 44(4) of the *ATIPPA, 2015*.

## II PUBLIC BODY'S POSITION

- [6] Regarding the allegation of improper collection of personal information, HRS referred to CRA's *RRSP Contributions You Withhold from Remuneration* webpage requiring employers to have "reasonable grounds to believe that an employee can deduct the contribution for that year" before completing a direct transfer to an employee RRSP account. CRA states that an employer has reasonable grounds "when the employee has given the employer confirmation that the contribution can be deducted for the year, or they have a copy of the employee's RRSP deduction limit statement from his or her notice of assessment." It has been HRS's practice to request the NOA from employees seeking this accommodation. HRS believes there is only one other process that would be a "verifiable method" of obtaining the information necessary to achieve "reasonable grounds" – requiring the employee to request confirmation of RRSP room, in writing, directly from CRA and providing this to HRS. As this process is a lengthy one and could serve to delay the transfer of funds, it is not a preferred option. HRS is of the view that relying on the employee's word alone does not provide HRS with confirmation.
- [7] Regarding the allegation of improper disclosure of the Applicant's personal information to a third party, HRS noted that to complete the transaction related to RRSP contributions, they are required to send any RRSP contribution directly to an employee's financial institution, as per CRA guidelines. During this process, payroll staff produce an RRSP cheque for an employee, and a copy of the pay stub containing earnings information is produced simultaneously. HRS noted that it routinely sent out the RRSP cheque, including the pay stub, to the financial institution of an employee. HRS acknowledged that this should not have occurred and that it had improperly disclosed the Applicant's personal information by unnecessarily sending the pay stub to his financial institution. HRS advised payroll staff to change this process immediately to ensure that the pay stub is removed prior to forwarding cheques to employees' financial institutions.
- [8] Regarding the allegation of inadequate protection of the Applicant's personal information, HRS noted it retained the NOA in the employee's file and therefore it had the same privacy protection as any other information HRS collects from employees. HRS

outlined its policies and procedures, noting it had developed strict guidelines related to who may access files retained in its registry and the situations when these files may be shared and/or reviewed. HRS highlighted its “Personal File Policy” among its human resource policies, which stresses the obligation to maintain the confidentiality and security of employee files.

[9] In a follow-up submission, HRS provided additional detail regarding the protections it enforces over personal information in its care and custody. Payroll Officers process the information and store it in the personal file of each employee. Payroll is a locked environment with limited access. Further, access to personal files requires written consent from the Director of HR and files must be signed in/out from the Compensation and Benefits Division Office. Only authorized personnel may retrieve and return files.

[10] Finally, HRS acknowledged that its communication with the Applicant may have impacted his decision to complain to this Office. It acknowledged that it had not clearly communicated to the Applicant why the personal information was necessary to process his request and committed to ensuring clients have consistent responses to general inquiries, with those requiring more in depth discussion to be managed by senior staff.

### III COMPLAINANT’S POSITION

[11] At first, HRS requested the Applicant to provide his NOAs in full to HRS in order for it to complete the transfer of funds to his RRSP account. He detailed his attempts to understand why this collection was necessary, including correspondence with multiple HRS employees. During this time HRS maintained the NOAs in full were necessary, eventually indicating to the Applicant that it required this information “to ensure the proper transfer of funds.” The Applicant argued that CRA does not explicitly require the collection of NOAs in full by an employer in order for it to be said to have “reasonable grounds” that the employee can deduct the contribution for the year. He noted two possibilities from the CRA’s webpage for how an employer might obtain “reasonable grounds” – via employee confirmation or through a copy of the employee’s RRSP deduction limit statement from his or her NOA, lesser

amounts of personal information than the requirement of the NOA in full. The Applicant offered a compromise to HRS: he would provide the NOAs with all non-RRSP information redacted in order to have the transfer of funds completed, and HRS agreed. The Complainant argues correctly that HRS should not have required the NOA in full in order to complete the transfer.

[12] The Complainant also contends an employee can offer their own confirmation of the amount of RRSP deduction limit room and HRS need not be concerned with paper confirmation because it is only accurate at the moment issued and therefore could be inaccurate at the point in time when the transfer is made. He also noted that it is the employee, not HRS (or any employer) “who bares [sic] all responsibility of any underpaid tax amounts” or penalties as a result of there not being sufficient RRSP deduction room to accommodate the transfer of remuneration.

[13] The Complainant noted that it had been his experience (as an accountant) that CRA does not enforce the policy set out on that webpage, indicating he had confirmed this as well by speaking directly to a CRA representative. He paraphrased that conversation explaining he was told CRA “maintains that the particular webpage exists but the policy is not followed...and that this information is provided to everybody and if [his] employer was to check, they would have received the same information.” The Complainant contended then that HRS’s information collection policy is within its responsibility and not directed by CRA.

[14] The Complainant argued that HRS was in violation of the *ATIPPA, 2015* because it attempted to collect and collected personal information that was not necessary for an operating program or activity of HRS and because it had not informed him of its authority to collect the information requested.

[15] The Complainant also submitted that HRS had improperly disclosed his personal information when it provided his financial institution with unnecessary personal information (a copy of his pay stub) in the course of the transfer of his severance funds. The Complainant noted that he was made aware of the breach by his financial institution and subsequently contacted HRS to inquire why it had disclosed his pay stub to his financial

institution. HRS first responded to note that the pay stub would not be sent as part of the transaction, indicating it agreed that information should not be disclosed, seeming to suggest the disclosure had not happened. As the Complainant knew the pay stub had been disclosed, he argued that HRS's response suggested it had not fully investigated his concerns. The Complainant also contended that the type of information included on the pay stub put him at risk for identity theft and generally "significant harm" by its improper disclosure. Once the Complainant had been made aware how the pay stub came to be disclosed (because it was automatically printed during printing of the severance cheque), he also expressed concern that there could be other incidents of automatic printing of the pay stub, and if so, whether there could have been additional incidents of unauthorized disclosure.

[16] Finally, the Complainant alleged inadequate protection of his personal information by HRS but provided no details beyond those already noted. The Complainant indicated an uneasiness regarding the ability of HRS to protect personal information in its custody and control.

#### IV DECISION

[17] The following are the issues to be determined:

1. Did HRS improperly collect the Complainant's personal information?
2. Did HRS improperly disclose the Complainant's personal information to a third party?
3. Did HRS adequately protect the Complainant's personal information?
4. Did HRS uphold its legislative obligations when made aware that a breach of personal information had occurred?

#### **Did HRS improperly collect the Complainant's personal information?**

[18] Section 61 of the *ATIPPA, 2015* states:

*61. No personal information may be collected by or for a public body unless*

- (a) *the collection of that information is expressly authorized by or under an Act;*
- (b) *that information is collected for the purposes of law enforcement; or*
- (c) *that information relates directly to and is necessary for an operating program or activity of the public body.*

The information in question is not expressly authorized for collection under the *ATIPPA, 2015* 61(a), nor was it being collected for law enforcement purposes 61(b). In these circumstances then, the question to answer becomes, was HRS's collection of NOAs related directly to and necessary to complete direct transfers of employee remuneration to RRSP accounts?

[19] The CRA webpage notes that an employer must have "reasonable grounds to believe that the employee can deduct the contribution for the year" when agreeing to complete a direct transfer of remuneration to an employee's RRSP account. It further notes that "reasonable grounds" are established where the employee has provided the employer with confirmation of such, or the employer has a copy of the employee's RRSP deduction limit from his/her NOA.

[20] These types of transfers are accommodations of employees. No employer is required to complete these transfers but often do, as it is convenient to employees. Otherwise, employees have to submit the relevant document with their tax returns and wait for refunds, if any, from the CRA. It is also more than simply a matter of an employee bearing the consequences of overpayment. Failure to exercise due diligence on an employer's part can result in CRA imposing financial sanctions on an employer. I conclude that while HRS is not authorized to collect full NOAs, collection of the RRSP portion of NOAs is authorized to accommodate an employee's request to directly transfer remuneration to RRSP accounts.

[21] The collection of personal information should be limited to that which is necessary to fulfil the public body's purpose. HRS's collection of the full NOA was not the only method of verification. HRS acknowledged this in agreeing to accept only the RRSP portion of the NOA when proposed by the Complainant as a means to resolve the matter.

[22] The CRA webpage references “confirmation from the employee” as a means of due diligence. HRS submitted that its process for the latter would involve requiring the employee to request confirmation of RRSP room, in writing, directly from CRA and providing this to HRS. Both methods then appear to collect essentially the same information, namely a CRA-endorsed statement of RRSP deduction room information. One is provided via the requisite portions of the employee’s NOA, while the other comes via a letter from CRA. The main difference, as acknowledged by HRS is that the latter would require additional steps for employees to take which would likely extend the process and delay the transfer as HRS indicated.

[23] I conclude that both options serve to enable employers to demonstrate due diligence while keeping the collection of information for this purpose to the minimum amount necessary.

**Did HRS improperly disclose the Complainant’s personal information to a third party?**

[24] The additional personal information released to the third party financial institution included an alternative residential address, year to date income, CPP payments, EI payments, Income Tax payments and Public Pension payments, as well as employer paid amounts for Supplemental Health, Basic Life, Basic AD&D and Public Service Pension Plan. The relevant section of the *ATIPPA, 2015* is section 68(2):

*68.(2) The disclosure of personal information by a public body shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is disclosed.*

[25] HRS acknowledged that the pay stub had been provided to the Complainant’s financial institution, and that this disclosure of the Complainant’s personal information should not have occurred. HRS explained that the pay stub was automatically produced and mailed with the cheque. HRS has already advised its staff of this issue and it has ceased providing the pay stub along with the RRSP cheque as part of its current practice.



**Did HRS adequately protect the Complainant's personal information?**

[26] Section 64 states:

*64. (1) The head of a public body shall take steps that are reasonable in the circumstances to ensure that*

- (a) personal information in its custody or control is protected against theft, loss and unauthorized collection, access, use or disclosure;*
- (b) records containing personal information in its custody or control are protected against unauthorized copying or modification; and*
- (c) records containing personal information in its custody or control are retained, transferred and disposed of in a secure manner.*

[27] HRS offered details of its policies and guidelines to safeguard personal information, as outlined in its submission section above. HRS advised that it reviews these policies to keep them current and to respond to any deficiencies. These policies and procedures are consistent with measures that the *ATIPPA, 2015* requires public bodies to employ to safeguard personal information. In conducting its business, HRS must ensure that its practices comply with these policies and procedures, something that did not occur here.

[28] HRS's original responses to the Complainant demonstrate that it did not adequately consider the amount of personal information necessary to complete these transfers. In the ongoing review of its policies, HRS must apply a lens that focuses on ensuring that where authorized to collect personal information, it collects the minimal amount necessary.

**Did HRS uphold its legislative obligations when made aware a breach of personal information occurred?**

[29] HRS could and should have done a better job of communicating with the Complainant directly and addressing his inquiries in a more timely fashion, particularly by providing a full and direct response to his question regarding its legal authority for collecting NOAs. Furthermore, HRS should have properly investigated the Complainant's allegation of a breach of personal information when notified, including notifying this Office when it discovered a breach had occurred.

[30] HRS, in its submission to this Office, acknowledged these shortcomings. It addressed its response to the Complainant's breach notification by indicating that it has undertaken to update internal processes around the collection and use of information, as follows:

- updating its retirement package and emails that are sent out to include the reason for collecting the information on the NOA, and specifically the sections that are required in order to complete the RRSP transfer;
- instructing Payroll to remove the "pay stub" portion prior to sending the RRSP cheque to a client's financial institution; and
- ensuring HRS staff are aware of updates to information to be shared, and that consistent procedures are followed.

[31] Additionally, HRS noted that it has recently been engaged in significant restructuring activities which include a focus on how divisions interact with each other and share information, as well as defining clear roles and responsibilities for divisional staff. HRS believes that the outcome of this review will support improved service delivery and protection of personal information.

[32] These efforts are commendable. I stress however that a breach of personal information in any form (and not simply the circumstances here of improper disclosure) gives rise to legal obligations under the *ATIPPA, 2015*, which include having proper breach protocols in place, conducting an investigation, and reporting the incident to this Office in a timely fashion.

## V CONCLUSION

[33] HRS improperly disclosed the Complainant's personal information to a third party and did not uphold its legislative obligations when made aware that a breach of personal information occurred. While it initially sought to collect unnecessary personal information it ultimately agreed to collect only information necessary for its purposes.

## VI RECOMMENDATIONS

[34] Under the authority of section 76(1)(a) of the *ATIPPA, 2015*, I recommend that HRS stop disclosing unnecessary personal information when processing requests for severance allowance transfers.

[35] Under the authority of section 76(2), I recommend that HRS:

1. ensure that its practices comply with its policies and procedures; and
2. ensure it has proper breach protocols in place and that they are followed.

[36] As set out in section 78(1)(b) of the *ATIPPA, 2015*, the head of the HRS must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report (in this case, the Complainant) within 10 business days of receiving this Report.

[37] Dated at St. John's, in the Province of Newfoundland and Labrador, this 29<sup>th</sup> day of August, 2018.

Donovan Molloy, Q.C.  
Information and Privacy Commissioner  
Newfoundland and Labrador