

ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on Investigation into Complaint Regarding Collection of Personal Information

May 7, 2003

Northern Alberta Institute of Technology

Investigation #2465

INTRODUCTION

[1] On June 17, 2002, the Commissioner received a privacy complaint from the Alberta Union of Provincial Employees Local 038 ("AUPE") against the Northern Alberta Institute of Technology ("NAIT"). AUPE questioned the amount of personal information collected by NAIT from its "Health Screening Questionnaire" and NAIT's authority to collect this information.

[2] Section 53 of the *Freedom of Information and Protection of Privacy Act* ("the FOIP Act") sets out the Commissioner's general powers. Under section 53(1)(a), the Commissioner may conduct investigations to ensure compliance with any provision of the FOIP Act. In addition, section 53(2)(e) allows the Commissioner to investigate complaints that personal information has been collected, used or disclosed in contravention of Part 2 of the FOIP Act.

[3] In response to the complaint, the Commissioner authorized me to investigate this matter. This report outlines the findings and analysis of my investigation.

BACKGROUND INFORMATION

[4] In 1993, NAIT developed and implemented the following:

- Human Resources Recruitment/Hiring Policy HR. 3;
- Recruitment, Selection and Employment Types Guideline HR.3.1; and
- Human Resources Procedure HR.3.1.

[5] The Policy, Guideline and Procedure required that offers of salaried employment to external candidates be conditional upon the completion of a health questionnaire and a positive assessment by NAIT's Health Services. The purpose of the assessment was to assess a prospective employee's ability to perform the duties and responsibilities of the position for which he/she applied.

[6] Over time, the format and design of the health questionnaire evolved. The health questionnaire also became an information source to enable NAIT's Health Services to provide salaried employees with appropriate care in the event of emergency or for routine health assessment.

[7] On September 1, 1999, the FOIP Act was extended to post-secondary institutions. NAIT is an “educational body” as defined by section 1(d)(ii) of the FOIP Act and is subject to the provisions set out in the FOIP Act.

[8] In early 2002, NAIT Human Resources commenced a systematic review of several of NAIT’s Human Resources policies, guidelines and procedures. As a result of this review, NAIT ceased all use of its Health Screening Questionnaire in May 2002 and is currently in the process of formulating new guidelines and procedures on this matter.

SCOPE OF INVESTIGATION

[9] The FOIP Act did not apply to NAIT until September 1, 1999. NAIT’s use of the Health Screening Questionnaire to collect personal information pre-dates the application of the FOIP Act to post-secondary institutions. The Commissioner has said that the obligations on public bodies respecting personal information did not exist before the application of the FOIP Act and that the FOIP Act cannot be applied retroactively [Order 96-021[260]; Order 97-004 [21, 22]; and Order 2000-002 [95]]. Therefore, this Office has no jurisdiction to review NAIT’s collection of personal information by its Health Screening Questionnaire prior to September 1, 1999.

[10] As NAIT continued to use the Health Screening Questionnaire to collect personal information after the FOIP Act was extended to post-secondary institutions in September 1, 1999, the collection would then be subject to the collection provisions set out in the FOIP Act. Therefore, this Office has authority to review the collection as of September 1, 1999. However, at the time that the complaint was filed with the Commissioner, NAIT had already decided to cease its use of the Health Screening Questionnaire. Therefore, the “document” that is the subject of the privacy complaint no longer exists.

[11] Although NAIT is no longer using the Health Screening Questionnaire as of May 2002, it acknowledges there is a continued need to collect personal information when assessing prospective employees and to provide health services for employees. AUPE filed its privacy complaint after NAIT made the decision to discontinue its use of the Health Screening Questionnaire. It seems to me that the issue is not with the “form” used by NAIT to collect personal information but the collection itself – that is, the amount of personal information collected and NAIT’s authority to collect this information.

[12] As a result, my investigation reviewed the personal information collected by NAIT relating to the assessment of prospective employees and the delivery of health services from September 1, 1999 to May 2002 and from May 2002 to now.

ISSUE

[13] The issue in this investigation is:

Does NAIT’s collection of personal information relating to the assessment of prospective employees and the delivery of health services comply with the FOIP Act?

NAIT'S POSITION

[14] NAIT claims its collection of personal information complies with section 33(c) of the FOIP Act, which allows a public body to collect personal information that "*relates directly to and is necessary for an operating program or activity of the public body*".

[15] NAIT says the collection of personal information for assessing prospective employees is part of its operating activity of managing human resources. NAIT references the following provisions under the *Technical Institutes Act* as its general legal authority for the development of policies and programs, on which its recruitment/hiring policies, guidelines and procedures are based:

- section 7(b) authorizes the board to determine general policies with respect to the organization, administration and operation of the technical institute; and
- under section 14(3), the president is responsible for the general supervision and direction of the operation of the technical institute, including the policies and programs of the technical institute.

[16] NAIT also says the collection of personal information for emergency and routine health assessment is part of its health services program. Health Services is a department within NAIT that offers a variety of health and nursing services to students and staff. The information collected enables the nursing staff to fulfill their professional obligations in the provision of appropriate care.

ANALYSIS

Authority to Collect

[17] I agree that section 33(c) of the FOIP Act authorizes NAIT to collect personal information that is relevant and necessary to its assessment of prospective employees and to the delivery of health services to its employees.

[18] However, the assessment of prospective employees and the delivery of health services to employees are separate and distinct programs/activities with different information requirements. In my view, personal information relating to bona fide occupational requirements would be relevant and necessary to the assessment of prospective employees. But the delivery of health services would require personal information of a broader scope and nature, dependent on the health issues or needs of the employees. In other words, personal information collected may be relevant and necessary for one program/activity but may not be relevant and necessary for the other.

NAIT's Collection from September 1, 1999 to May 2002

[19] In my view, NAIT's authority to collect personal information from the Health Screening Questionnaire would fall under section 33(c) of the FOIP Act in situations where the prospective employee indeed became an employee of NAIT.

[20] However, NAIT would not be authorized to collect personal information relating to the delivery of health services from prospective employees who did not become employees of NAIT. By using one form (i.e. the Health Screening Questionnaire) to collect personal information for the two programs/activities, NAIT was at risk of collecting more personal information than was relevant and necessary from prospective employees, who did not become employees of NAIT.

[21] I find that NAIT's risk of unauthorized collection was significantly reduced by its operational practice. Although employment offers were "conditional" upon completion of the Health Screening Questionnaire, NAIT said the questionnaires were generally completed after the individuals commenced employment with NAIT. As a result, it is unlikely that the Health Screening Questionnaire was completed for a prospective employee who did not become an employee of NAIT.

[22] In filing its complaint with the Commissioner, AUPE did not identify any specific incident whereby the Health Screening Questionnaire was completed by a prospective employee who did not become employed by NAIT. AUPE's complaint was NAIT's practice of using the Health Screening Questionnaire as a "screening device" as opposed to a specific collection incident. Therefore, other than my review and comments regarding NAIT's practice of using the Health Screening Questionnaire, my investigation makes no findings of an unauthorized collection.

NAIT's collection from May 2002 to now

[23] As of May 2002, NAIT ceased all use of the Health Screening Questionnaire. Although new guidelines and procedures have not yet been finalized, NAIT says it has now separated the collection processes for the two programs/activities as follows:

- Assessment of prospective employees

Prospective employees for positions which involve bona fide occupational requirements will be given a letter to take to their physician. The letter describes the specific physical demands and requirements of the position applied for and asks the physician to assess the prospective employee's ability to perform the work described.

Sample copies were provided for my review. The first part of the letters provides a general description of the duties and physical requirements of the positions e.g. lifting, carrying, climbing stairs, working in awkward positions, operating motorized vehicles, etc. The second part of the letter asks the physician to select "yes" or "no" as to the prospective employee's capability to perform or meet the listed physical demands of the position applied, such as: sitting at a desk for extended periods; standing and walking for extended periods; climbing stairs; lifting specific weights; pushing/pulling objects of specific weights; etc.

Therefore, the amount of personal information collected for assessing prospective employees is limited and specific to the occupational requirements of the position applied for.

- Delivery of health services

When an employee first approaches Health Services for nursing/medical assistance, the employee will be asked to complete a "Health Record" form. The Health Record form is significantly different from the previous Health Screening Questionnaire in terms of format and kinds of personal information collected.

The Health Record form collects information such as the employee's name, position, home address, telephone number (work and home), birthdate, gender, emergency contact, physician, and medical history. However, the medical history required is opened to the employee to decide what amount of information to provide to NAIT. As the purpose of this program/activity is to provide health services to the employee, it seems reasonable that the individual employee be the decision-maker as to what his/her medical needs are and what information should be disclosed to Health Services.

NAIT says the personal information collected on its Health Record is similar to the kinds of information that individuals provide when they visit a physician's office or a medical centre for the first time.

[24] I find NAIT's decision to implement separate collection processes for the two programs/activities is in compliance with section 33(c) of the FOIP Act. The separate collection processes would remove any confusion relating to NAIT's authority to collect such information and minimizes the potential risk for unauthorized collection, use and disclosure of personal information.

[25] I also commend NAIT for its decision to review and ensure the personal information collected is relevant and necessary for each of the programs/activities. I think it is a good practice for a public body to periodically evaluate the personal data it collects to determine if there is a continuing need for the information.

CLOSING COMMENTS

[26] In summary, I conclude:

- The FOIP Act did not apply to NAIT prior to September 1, 1999. Therefore, NAIT could not be in breach of the FOIP Act at that time.
- Section 33(c) of the FOIP Act authorizes NAIT to collect personal information that is relevant and necessary to its assessment of prospective employees and to the delivery of health services to its employees. However, the programs/activities are separate and distinct, with different information requirements. By using one form to collect personal information for the two programs/activities, NAIT was at risk of collecting more personal information than was relevant and necessary from prospective employees who did not become employees of NAIT. However, there is no evidence before me of a specific unauthorized collection.
- NAIT's current collection practices comply with section 33(c) of the FOIP Act.

[27] I would like to thank NAIT for its cooperation during this investigation and encourage NAIT to proceed with the finalization of its new guidelines and procedures in a timely manner. This case can now be closed.

Submitted by,

Marylin Mun
Team Leader, FOIP