



**[4]** The Commissioner notified the Complainant and the DOJ of the conflict and in accordance with the provisions of section 63.1 (1) in ATPPA, I was appointed Special Information and Privacy Commissioner on August 15, 2024, to determine the matters under review.

## **Issues**

**[6]** The issues in this case are whether the DOJ was authorized under ATIPPA to collect and use the Complainant's personal information and whether the DOJ should correct the Complainant's personal information.

## **Facts**

**[7]** The Complainant applied for several jobs.

**[8]** A senior official at DOJ who received the Complainant's name for employment consideration in April 2024 initially rejected the Complainant's candidacy based on advice previously received from the Human Resources (HR) branch of the Nunavut government.

**[9]** The senior official made additional enquiries of HR in May of 2024. HR told the senior official that, while HR had previously "flagged some issues online" regarding the Complainant, the references found online could relate to another individual and therefore should not be treated as definitive evidence of wrongdoing. HR recommended that DOJ ask the Complainant for their credentials and consent to a criminal background check.

**[10]** Based on this conversation, the senior DOJ official agreed to meet the Complainant in June 2024, to discuss potential employment. Following the meeting, the senior official conducted an online search of the Complainant. This disclosed that the Complainant had been the subject of disciplinary proceedings by a provincial law society. The senior official emailed the Complainant and explained that the nature of those findings made it impossible to employ the Complainant at the DOJ since the positions at the DOJ were "ones of trust."<sup>1</sup>

---

<sup>1</sup> July 2, 2024, record disclosures to the Complainant, pp. 12-13

**[11]** The Complainant confirmed they were the subject of the disciplinary proceedings but said, among other things, the law society’s findings were the subject of an ongoing appeal. The senior official responded that, while they appreciated the Complainant’s viewpoint, given the circumstances, it would not be prudent to recommend the Complainant’s employment by DOJ.

**[12]** At about the same time, a DOJ director was considering the Complainant’s candidacy for a different position. In the course of that job competition the DOJ director emailed a colleague an online link to the Complainant’s law society disciplinary proceedings. It is not clear how the director came to have this information but the director’s knowledge and sharing of the link became known to the Complainant through an access to information request.

**[13]** This information described in the above paragraph, and the apparent basis for the senior DOJ official’s decision not to recommend employment, led the Complainant to complain to the Information and Privacy Commissioner that the Complainant’s personal information had been collected and used contrary to ATIPPA.

## **Law**

**[14]** Section 40 of ATIPPA provides the basis upon which a public body such as the DOJ may collect personal information:

### **Purpose of collection of information**

40. No personal information may be collected by or for a public body unless
- (a) the collection of the information is expressly authorized by an enactment;
  - (b) the information is collected for the purposes of law enforcement;
  - (c) the information relates directly to and is necessary for
    - (i) an existing program or activity of the public body, or
    - (ii) a proposed program or activity where collection of the information has been authorized by the head with the approval of the Executive Council;
  - or
  - (d) the collection of the information for research or statistical purposes is authorized by or under the *Statistics Act*. S.Nu. 2006,c.21,s.26(2).

Section 41 works in conjunction with section 40 and states that a public body “must, where reasonably possible, collect personal information directly from the individual the information relates to”. Exceptions to this rule include that set out in

section 41 (1)(j) where the personal information is collected “for the purpose of hiring, managing or administering personnel of the Government of Nunavut or a public body.”

Section 43 of ATIPPA permits, among other things, use of personal information only for the purpose it was collected or for a use consistent with the original purpose of collection.

## **Analysis**

*Is personal information at issue?*

**[15]** The information in question comes from the website of a provincial law society. It reveals details of the Complainant’s professional history and disciplinary record as a lawyer in that province. There is no dispute that the information is about the Complainant and is therefore the Complainant’s “personal information” as defined in ATIPPA.

*Collection for the purpose of hiring personnel*

**[16]** The DOJ argued that section 41(1)(j) of ATIPPA authorizes the collection of the Complainant’s personal information in this case. The DOJ’s argument asks me to assume that the collection of the personal information for hiring purposes is permitted under section 40 of ATIPPA.

**[17]** In reading sections 40 and 41 together I agree with the DOJ’s position. In specifically delineating the hiring of personnel under section 41 as an activity which allows for the collection of personal information indirectly, the Nunavut Legislature has clearly signaled that collecting personal information in general terms for this purpose is an activity authorized under section 40.

**[18]** This conclusion still requires me to determine whether, on the facts of this case, the collection was, as section 40 requires, directly related to and necessary for the DOJ’s hiring process.

*Is the collection of the personal information directly related to and necessary for its hiring process?*

**[19]** The Complainant argues the collection is not directly related to the hiring process in the sense that there was no requirement for the Complainant to hold a certification from the provincial law society in issue to be eligible for the positions applied for. The DOJ submits the collection is directly related because, during the interview process, the Complainant disclosed they had previously been a lawyer. In such circumstances the DOJ says it would always, and did in this circumstance, check their record with the relevant law society and court records.

**[20]** In my view, the personal information in question related directly to the public body's hiring process. In at least one of the jobs the Complainant applied for, the Complainant was screened in based upon experience in "law or a related field".<sup>2</sup> The materials before me also disclose that the Complainant, in applying for a position at DOJ, provided a resume noting previous experience as a lawyer and "providing legal advice to clients on legal matters".<sup>3</sup> Where a public body seeks to hire someone with experience in law, or as a lawyer, personal information revealing an applicant's professional discipline history as a lawyer is "directly related to" the public body's activity of hiring a qualified candidate.

**[21]** As to whether the collection of the personal information was necessary, the Complainant argues it was not; it submits the DOJ's collection of the personal information in question amounted to "unnecessary scrutiny, expanding the background check process and collecting irrelevant information that went beyond standard practice".<sup>4</sup> The Complainant describes this as improper surveillance and submits that ATIPPA requires that public bodies collect only the minimum amount of information necessary, and through lawful means, which did not happen in this case.

**[22]** For its part the DOJ submits that when a current or former lawyer applies for a position, the Department commonly reviews public records, such as law society decisions from the province or territory where the

---

<sup>2</sup> July 2, 2024 disclosure of records to Complainant, p.1

<sup>3</sup> July 2, 2024 disclosure of records to Complainant, p.4

<sup>4</sup> Complainant submission, October 28, 2024, p.9

individual practiced, as well as CanLII, which provides access to Canadian judicial decisions. The DOJ argues that a main purpose of law societies is to protect the public and employers by ensuring that lawyers' professional or discipline history is available to the public. The DOJ contends that it has the legal authority to review such databases and a duty to do so before hiring a lawyer, whether current or former.

**[23]** The term “necessary” has been considered in many jurisdictions with access and privacy laws in Canada. I adopt the approach taken by then Commissioner David Loukidelis in interpreting a similarly worded provision in British Columbia’s *Freedom of Information and Protection of Privacy Act*, in *Board of Education of School District No. 75 (Re)*, 2007 CanLII 30395 (BC IPC) at paragraphs 48 and 49:

It is certainly not enough that personal information would be nice to have or because it could perhaps be of use some time in the future. Nor is it enough that it would be merely convenient to have the information...

At the same time, I am not prepared to accept... that in all cases personal information should be found to be “necessary” only where it would be impossible to operate a program or carry on an activity without the personal information. There may be cases where personal information is “necessary” even where it is not indispensable in this sense. The assessment of whether personal information is “necessary” will be conducted in a searching and rigorous way. In assessing whether personal information is “necessary”, one considers the sensitivity of the personal information, the particular purpose for the collection and the amount of personal information collected, assessed in light of the purpose for collection.

Applying this approach, the submissions and the evidence establish that the personal information the DOJ collected was “necessary” for the purposes of its activity of hiring employees. All positions in public service are ones of trust but that level of trust is especially heightened in the DOJ’s case. Without going into detail that might identify the Complainant, one of the positions the Complainant applied for involved working with vulnerable citizens, a fact that heightens the need for the DOJ to ensure that its prospective employee was trustworthy by collecting the information in issue.

**[24]** On the facts of this case, and without offering the DOJ carte blanche across the spectrum of DOJ employment opportunities, I find that the personal information collected through the DOJ’s search of publicly available

provincial law society disciplinary records was “necessary” for the purposes of this hiring activity.

**[25]** As an aside, I would note the DOJ had also argued that it was entitled to collect the respondent’s personal information because the law society’s disciplinary records concerning the Complainant are public and therefore “not protected by privacy laws”. This is incorrect. ATIPPA’s rules about the collection of personal information apply to personal information that is publicly accessible. There is no doubt, in other words, that the DOJ may only collect personal information if section 40 of ATIPPA authorizes the collection as it does here. It follows that the publicly available nature of personal information is irrelevant.

*Was the DOJ required to have the Complainant’s consent to the collection of personal information?*

**[26]** The Complainant argues the DOJ contravened ATIPPA because it did not have the Complainant’s consent for collection and use of the Complainant’s personal information. The Complainant’s argument is without basis because ATIPPA does not require consent for collection. ATIPPA is an authorization-based statute. This means so long as there is an identified authority for collection of personal information as defined in the statute, and as is the case here, the public body is entitled to do so. Section 41 of ATIPPA states a preference for public bodies to directly collect personal information from an individual where “reasonably possible” but also prescribes situations where this is not required, including the of hiring employees, as is the situation in this case.

**[27]** On the latter point of a public body collecting personal information indirectly, it is important to note that even where this is permitted, transparency may still have a role to play. It would be entirely appropriate for a public body to state in its job postings or in communications with applicants, that it would, as part of a vetting process, canvass an applicant’s professional background via the records of relevant professional oversight bodies. Notification of this kind would potentially avoid future misunderstandings by job applicants. In this case the Complainant was notified of the law society search, albeit after the fact.

### *The use of the Complainant's personal information*

**[28]** As described above, the Complainant's personal information was collected to check their professional credentials during the DOJ's hiring process. The evidence is clear that the personal information once collected was used for the purpose for which it was collected. Therefore, its use was compliant with section 43 of ATIPPA.

### *Request for correction of personal information*

**[29]** The Complainant made additional submissions on September 11, 2024, and November 4, 2024, asking the DOJ, through me, to correct any records "indicating disqualification or unsuitability for employment based solely on involvement in disciplinary proceedings".

Section 45 of ATIPPA provides as follows:

#### **Right of correction**

45. (1) An individual who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

**[30]** As the provision indicates, my jurisdiction arises here only *after* an individual has requested the head of the public body to correct information that may be subject to errors or omissions. I am not aware of any request being made.

**[31]** At one point, the Complainant explained to the DOJ that they were making an access to information request to the public body to ensure information about them was accurate "and to correct any discrepancies if necessary".<sup>5</sup> Again, there is no evidence before me that any such correction request occurred after this exchange with the DOJ.

**[32]** Further to this, the Complainant, on numerous occasions, sought confirmation as to whether their name is on an employment blacklist record. As recently as October 22, 2024, HR has told the Complainant that they are

---

<sup>5</sup> Complainant email to DOJ employee, June 18, 2024



“not on any list restricting you from employment consideration. You are considered a priority 2 candidate which is the priority pool for all other non-Nunavut Inuit candidates”.<sup>6</sup>

**[33]** In the event I am wrong about my authority to decide matters under section 45, and in the event a record did exist that states the Complainant is not to be considered for DOJ employment, I would find the Complainant could not, under the guise of a “correction”, seek to reverse the DOJ’s decision that the Complainant is ineligible for employment. The right under ATIPPA to request a “correction” of personal information is not an appeal mechanism that can be used to overturn decisions that an individual disagrees with.

**[34]** The essence of the Complainant’s concern, in my view, is their taking issue with the accuracy or reliability of the findings in the provincial law society disciplinary proceedings. However, those records, and the personal information they contain, are not records of the DOJ or any other Nunavut government body. It is not within their power to do anything about the content of those records, even if they possess copies of them. Any remedy for alleged “errors” or “omissions” in those records lies in the province in which those records originated, not under ATIPPA. For this reason, I would not see any need for the DOJ to annotate that information with any “correction” in the event I did have jurisdiction over the matter.

## **Conclusion**

**[35]** In closing, I find that the DOJ was authorized to collect and use the Complainant’s personal information in this case.

---

<sup>6</sup> Complainant submission, October 28, 2024, p. 18

