

Order No. PP- 06 - 003

Re: Department of Health

**Prince Edward Island Information and Privacy Commissioner
Karen A. Rose, Acting Commissioner**

August 2, 2006

I. BACKGROUND

On November 2, 2004, the Office of the Information and Privacy Commissioner received a privacy complaint relating to the Department of Health, formerly the Queens Health Region (hereinafter referred to as “the Public Body”). The complaint arose as a result of the implementation of a dress code policy at the Complainant’s workplace which required employees to have their full names placed on their name tag. The Complainant contends that the Public Body violated Part II of the *Freedom of Information and Protection of Privacy Act* (the “*FOIPP Act*”) in disclosing her personal information without her consent.

Jurisdiction

The Complainant is a nursing employee of a health care facility which is operated by the Division of Continuing Care through the former Queens Health Region, now the Department of Health. The Queens Health Region became a public body by regulation on November 8, 2003. Therefore, it was determined that the Office of the Information and Privacy Commissioner has jurisdiction over this matter pursuant to the Regulation to the *FOIPP Act*.

Procedure

Section 50 of the *FOIPP Act* permits the Commissioner to investigate and attempt to resolve complaints that personal information has been collected, used or disclosed by a public body in violation of Part II of the *FOIPP Act*.

The Complainant attended at my Office on November 2, 2004, to provide the facts relating to the complaint and, subsequently, put the complaint in writing on that same day. I requested the Public Body provide me with all records relating to its policy decision regarding employee name tags. The relevant records were received in this Office on December 3, 2004. The records contain pages of Continuing Care Policy relating to name tags and minutes from three Continuing Care Joint Management Meetings dealing with the issue of name tags. There was no information regarding the reasons behind the new policy.

It is notable that subsequent to the receipt of the records of the Public Body, this Office was advised of a further change in name tag policy. The Public Body has agreed to allow the employees of this nursing home the choice to wear just the first name or the first and last name on their name tags. This choice would be offered to staff at a sister nursing home as well. Any new replacement name tags would be at the cost of the staff member. Any new staff will have the facility sharing the cost with the new staff member.

Despite the change in policy, on January 6, 2005, the Public Body was notified that the investigation would continue and was asked to provide clarification of its position that the requirement to have the Complainant's full name on her name tag was a violation of Part II of the *FOIPP Act*. The Public Body's response was received on February 2, 2005. The Public Body restated its position that the requirement to have the Applicant's full name on her name tag was not in violation of Part II of the *FOIPP Act*.

Similarly, although the complaint was dealt with in practice and reached a satisfactory resolution, the Complainant wishes to receive a decision from this Office regarding the application of the *FOIPP Act*.

Both parties were given an opportunity to make submissions. Submissions of the Public Body were supplied by letter dated April 8, 2005. The Complainant was given a copy of the Public Body's submissions and replied on April 21, 2005.

II. ISSUE

The issue arising from this complaint is as follows:

1. In requiring that the Complainant display her full name on her employee name tag, did the head of the Public Body disclose the Complainant's personal information in contravention of Part II of the *FOIPP Act*?

III. BURDEN OF PROOF

Section 65 of the *FOIPP Act* sets out guidelines as to the burden of proof in reviews involving access requests. In a situation wherein a Complainant claims that her personal information has been disclosed contrary to the *FOIPP Act*, there are no such guidelines in the legislation. Therefore, I must look at logical factors such as which party raised the issue and which party is best able to provide evidence. In the case before me, therefore, it is up to the Complainant to prove that a disclosure of her personal information has occurred and then up to the Public Body to show that the disclosure is a proper one under the *FOIPP Act*.

IV. RESULTS OF INVESTIGATION/SUBMISSIONS OF PARTIES

When asked to provide information about policies relating to name tags, the Public Body advised that the Division of Continuing Care has two policies, No. 5.2.06 and No. 5.2.07, both of which were amended in March, 2004. Policy No. 5.2.06, entitled Dress Code for Non-nursing Personnel, states that “approved name tags must be worn for identification purposes.” The information that must be included on the name tag is not specified. Policy No. 5.2.07, entitled Dress Code for Nursing Personnel, states that “approved name tags with first name, last name and designation must be worn for identification purposes.” The Complainant qualifies as nursing personnel.

The Public Body states that policies in other facilities vary greatly. It provides the example that employees of psychiatric units and emergency rooms have first names only on their name tags for security reasons. Remaining staff within the Queen Elizabeth Hospital and Prince County Hospital are required to have both names on their name tags.

The Public Body provides documents showing that the Ryerson School of Nursing and Sault College’s Health Sciences Program require that students be identifiable by wearing an official name tag with their full name, student status and name of the institution. In response to a query from this Office, the U.P.E.I. School of Nursing stated that it does not have a policy relating to name tags.

The parties agree that the Complainant’s full name is personal information in accordance with section 1(i)(i) of the *FOIPP Act*.

The Public Body relies on section 37(1)(a.1) of the *FOIPP Act*, that the disclosure of employees' full names on their name tags would not be an unreasonable invasion of the employees' personal privacy under section 15. Subsection 37(1)(a.1) allows disclosure of personal information under such circumstances.

Subsection 15(4) of the *FOIPP Act* sets out circumstances which are presumed to be an unreasonable invasion of a third party's personal privacy. The Public Body submits that subsection 15(4)(g)(i) cannot apply since "the professional designation that is displayed on the name tag is not personal information because it is not information that belongs solely to an individual employee. There are several employees within the workplace with identical designations, therefore the designation encompasses more than one single human being and cannot be considered as personal information." Further, the Public Body states that subsection 15(4)(g)(ii) does not apply because, "while it is the position of Queens Health Region that an employee's name is personal information, the disclosure of the name itself would not reveal personal information about the employee to a potential applicant. Unless additional personal information was available, a potential applicant could not reliably obtain personal information about individual staff members."

The Complainant argues in favour of her privacy and states, "How I choose to make my personal information available is not the Government's choice but mine." With regard to the Public Body's contention that nurses should be identifiable, the Complainant states as follows:

The client/resident or family member does not have the right to have the answers to where I live, where I come from, who I am related to or any other personal information. They need only to know that I am qualified and that I conduct myself in a respectful professional manner. If the client or

family wished to make a compliment or complaint they do not require my last

name to do this. They simply have to identify the persons first name, title, date, time and location would be all that is required for any competent supervisor to identify the individual involved.

Another reason the Complainant states she is opposed to having her full name on her name tag is concern for her security. On December 6, 2004, the Complainant advised this Office of an incident which had occurred at her place of employment, thereby providing further evidence in support of her privacy complaint. The Complainant advised as follows:

I was working nights over the weekend. Within minutes of our security guard leaving Sunday morning Dec. 5th, 5:30 am, a man in his mid thirties walked into our building. He stated he wanted to get out of the cold. He was a very large unkept man who seemed to have difficulty concentrating with frequent pauses in his conversation. He appeared unpredictable and very intimidating to say the least! He was not in a hurry to leave, we did call the police and he ended up leaving before the police arrived. But before he left, he gave his name and wanted to know my name as well as my supervisors name. I had a lab coat on and managed to cover my name tag. However, I did give him my first as he had already heard my supervisor address me when she asked me to call the police. This again drives home to me why I do not want my last name on my name tag....

Finally, the Complainant states she is confused about the Public Body's position on the name tag issue:

Government have changed their position on having mandatory last names on the name tags. If they feel that their position is defensible then why are they not defending it. Why are they contradicting themselves? As I have stated, I find their official position is both confusing and inconsistent.

The Public Body also relies on subsection 15(5)(b), that disclosure is likely to promote public health and safety. It states full names are required in order that clients can complain to the appropriate regulatory bodies, thus protecting the public from unprofessional nursing conduct.

In addition to the circumstances the Public Body considered under section 15(5), it states it also considered the following:

- the fact that personal information is available to the public (by way of the Government Services telephone directory, a sample page of which was provided in the Public Body's submissions); and
- the fact that the name of the Complainant was provided solely in her professional capacity.

The Public Body also relies on section 37(1)(v), which allows it to disclose personal information for the purpose of managing or administering personnel of the Government of Prince Edward Island or a public body. The Public Body states that its disclosure of the Complainant's name relates to its maintenance of a highly qualified, competent and accountable workforce.

IV. FINDINGS

Is the information at issue "personal information"?

Personal information is defined in section 1(i) of the *FOIPP Act* as follows:

1. In this Act

(i) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, home or business address or home or business telephone number;

...

As noted above, the parties agree that the Complainant's full name qualifies as personal

information in accordance with the *FOIPP Act*. Based on the definition of personal information set out above, I find that the Complainant's full name is personal information in accordance with subsection 1(i)(i) of the *FOIPP Act*.

Has Part II of the FOIPP Act been violated?

Section 37(1)(a.1):

The Public Body relies on this subsection, which states as follows:

- 37. (1) A public body may disclose personal information only
 - (a.1) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 15;

In support of its position that the disclosure of the Complainant's full name would not be an unreasonable invasion of her personal privacy, the Public Body must look to the requirements of section 15 of the *FOIPP Act*. The Public Body argues that the Complainant's full name on her name tag does not qualify for a presumption under the following subsections of section 15 of the *FOIPP Act*:

- 15. (4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
 - (g) the personal information consists of the third party's name where
 - (i) it appears with other personal information about the third party, or
 - (ii) the disclosure of the name itself would reveal personal information about the third party;

I agree with the Public Body that the professional designation on the name tag does not

constitute personal information. In addition, although the Complainant's full name is associated with a complete live view of the individual wearing it, observations which are not recorded do not qualify as "personal information" under the *FOIPP Act*. I note that the Queen Elizabeth Hospital name tag includes a photograph of the employee wearing it. If this were the case here, there would be a presumption of unreasonable invasion of privacy, as the photograph would constitute recorded information of an identifiable individual. As it stands at the continuing care facility at issue, however, the name tag has name and professional designation only. Therefore, I find that the fact that the full name is on the name tag of the employee does not mean that it appears with other personal information about the employee.

Despite the fact that there are no presumptions of unreasonable invasion of the Complainant's personal privacy, the analysis does not end there. I must determine whether the Public Body has properly weighed the criteria set out at section 15(5) of the *FOIPP Act*. The subsections of section 15(5) of the *FOIPP Act* relied upon by the Public Body are set out as follows:

15.(5) In determining under subsection (1) or (2) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Prince Edward Island or a public body to public scrutiny;

(b) the disclosure is likely to promote public health and safety or the protection of the environment;

...

With reference to subsection 15(5)(a), the Public Body states,

Queens Health Region is accountable to the public for providing high quality health services delivered by qualified employees. In order to be accountable for the services that we provide, we must be able to attribute the services provided to individual service providers. This becomes critically important when dealing with risk management issues (eg. nursing home residents who may inadvertently wander away from the facility; a resident claiming to be given inappropriate medication; allegations of abuse etc.) In order to properly investigate these types of circumstances, we need to be able to obtain complete information from all people involved. It would be critically important for clients, residents or their families to be able to properly identify individual staff members so that issues can be properly investigated and risk to our clients can be minimized.

I considered this subsection (formerly subsection 15(3)(a)) in Order 03-003. In that Order, the public body cited Alberta Order 97-002, which held that in order to properly rely upon this subsection, evidence had to be provided to demonstrate that the activities of the public body had been called into question, necessitating disclosure of personal information to subject the activities of the public body to scrutiny. Once again, I find that disclosure of the Complainant's name is not *necessary* for public scrutiny as no evidence has been provided by the Public Body which calls its accountability for nursing personnel into question.

The Public Body also relies upon subsection 15(5)(b) of the *FOIPP Act*, that the disclosure of the Complainant's full name is likely to promote public health and safety. The Public Body points out that the Registered Nurses Association of British Columbia has a study posted on their website entitled: The Client's Right to Know Their Nurse and Question Care Versus the Nurses' Right to be Protected from Harm, which the Public Body relies on in support of its position.

The Public Body describes the RNABC document as follows:

In their discussion of staff identification practices they included results of a survey that their organization conducted among nurses from a variety of agencies. The study found that nurses in higher risk settings such as emergency, psychiatry and corrections settings, usually have their picture, first name and professional designation on the front of their name tags. On the reverse is the nurses full name, professional designation and name of the service department. The study also found that the settings where staff are less likely to be stalked or harassed include long-term care, community health and most acute care areas. Nurses in these settings generally have their full name and professional designation on their name tags.

I have reviewed the document referred to above by the Public Body and note the following statements therein:

In circumstances where there is a risk of harm to nurses, the hospital is justified in withholding the nurses' names.

...

All nurses have the right to be safe. This means that health care agencies have to balance the interests of their clients and staff when they are asked to release names of nurses.

...

Settings where staff are less likely to be stalked or harassed include long-term care, community health and most acute care areas.

...

Based on the above statements, combined with the fact that nursing personnel in the Public Body's emergency care and psychiatric facilities wear name tags with first name only, it is clear that within the Public Body and within the nursing profession safety and security override the necessity of full names on the name tags of nursing personnel. I am mindful of the Public Body's desire to enable the public to properly identify its nursing employees, however, the Public Body has provided me with no evidence whatsoever that the first-name-

only policy in these other two employment venues has caused any problems with such accountability to the public. On this basis, I reject the section 15(5)(b) argument as well.

The Public Body states it also considered that personal information is available to the public by way of the Government Services telephone directory and that the name of the Complainant was provided solely in her professional capacity. I note that there is an immediate personal risk which arises as a result of having a threatening individual know the nurse's full name, combined with a full description of said nurse. I compare that circumstance with the full name provided in the telephone directory and find that, while there is still personal information available to those who wish to find it, it does not pose the same immediate threat.

As I have noted on many occasions, "privacy" is a very difficult concept to define, as are many basic human rights. It is not defined in the *FOIPP Act*, but it is certain that most individuals become aware of their privacy when it is lost. We all have a sense of privacy and I suggest that the Complainant has an incentive to protect her privacy when it is threatened in the ways described by her in her submissions.

In addition to the subsections noted by the Public Body, I also refer to subsection 15(5)(e), which states that the third party will be exposed unfairly to financial or other harm. The Complainant's workplace was robbed at knife point. She has well-founded concerns for her personal safety. In addition, her job seems to bring with it an intimacy that invites people to contact her at home from time to time. She provides the example of when she was called at home by a family member of a client to be asked out socially and when she was called at home on two separate occasions by two separate residents wanting to discuss nursing and/or personal issues with her.

For all the above reasons, I find that, on balance, the disclosure at issue does constitute an unreasonable invasion of the Complainant's privacy and, therefore, the Public Body cannot

properly rely upon section 37(1)(a.1) of the *FOIPP Act*.

Subsection 37(1)(v):

The Public Body also relies on section 37(1)(v).

37. (1) A public body may disclose personal information only
- (v) for the purpose of managing or administering personnel of the Government of Prince Edward Island or a public body;

The Public Body states that its disclosure of the Complainant's name relates to its maintenance of a highly qualified, competent and accountable workforce. As noted above, however, I conclude that the Public Body can carry out its function of managing and administering nursing personnel in long-term care facilities by requiring only the first name and professional designation of nursing personnel on their name tags. The decision of whether to have her full name on her name tag should be one made by the Complainant herself.

I wish to point out that the complainant is also identifiable by her name tag which discloses her first name only. In these circumstances, a first name would be considered personal information of the Complainant. However, staff do need to be identified in some way in order to properly perform their duties and satisfy their employer's and their profession's needs of accountability. Such a disclosure would satisfy section 37(1)(a.1) of the *FOIPP Act*, as the scales of subsection 15(5) would be tipped in the Public Body's favour.

I wish to make one final note before moving on to the Order. The RNABC document also stated that, "If the concern is related to the care provided by a specific nurse or group of nurses, the client then has a right to know the full name of the nurse or nurses." In addition,

the Public Body points out that if it were to receive a request for an employee's first and last name, the request would be considered and all relevant issues would be explored. Decisions would be made on a case by case basis and would be in compliance with the *FOIPP Act*. The findings which I have made in this Order do not prevent this type of decision being made by the Public Body, including the decision to disclose an employee's full name where it is warranted. Making such a decision on a case by case basis is much different from a policy requiring full names on all employees' name tags.

V. ORDER

I have found that the head of the Department of Health violates Part II of the *FOIPP Act* by requiring the Complainant to wear a name tag during working hours which states her full name. If the Department of Health had not changed its policy for other reasons than privacy concerns, I would order the head of the Department of Health to stop disclosing the Complainant's personal information. However, the current policy is privacy compliant, making an Order unnecessary.

I also recommend that the head of the Public Body change its policy that new replacement name tags would be at the cost of the staff member who has decided that he or she wishes to display their first name only. Although the Complainant did not object to this new policy, paying to protect one's privacy seems contrary to the principles upon which Part II of the *FOIPP Act* is built.

I thank the Department of Health and the Complainant for their cooperation throughout the review process and especially for their patience in awaiting this Order.

Karen A. Rose
Acting Information & Privacy Commissioner