

Office of the
INTEGRITY
COMMISSIONER
New Brunswick



Bureau du
COMMISSAIRE
À L'INTÉGRITÉ
Nouveau-Brunswick

REPORT OF FINDINGS

Right to Information and Protection of Privacy Act

Matter No: 2018-4687-AP-2543

May 14, 2019

1. This Report of the Commissioner's Findings is made pursuant to s. 73(1)(a) of the *Right to Information and Protection of Privacy Act*¹.
2. The Applicant filed a request with the Department of Social Development (the Department) for a copy of the current (or any previous) iteration of a contract between the Department and We Care Home Health Services and CBI Home Health for services rendered at a Crescent Valley property (known as the McLaren House).
3. The Department responded by stating that it did not have any records relevant to the Request, as services rendered at the McLaren House were done by requisitions to the Department and that information could not be disclosed pursuant to s. 21 of the Act due to privacy considerations of the third party residents.
4. Dissatisfied with the Department's Response, the Applicant filed a complaint with our Office, by stating that he was interested in learning about the financial detail of the Agreement as taxpayer money is being used to cover the cost of care of residents at McLaren House and no tender was put out by the Department prior to entering into the Agreement.

I BACKGROUND

5. On March 27, 2017, the Department entered into a Service Agreement with We Care Home Health Services LP (CBI Health Group Company) to purchase professional services related to Home Support Services.
6. To obtain professional services to the residents at McLaren House, the Department sought the services of support service providers and We Care Home Health Services LP (CBI Health Group Company) was the only service provider equipped to provide the necessary care at that residence. As such, the Department hired We Care Home Health Services LP (CBI Health Group Company) to provide the services at McLaren House; however, the Department did not enter into a separate Service Agreement regarding these services with We Care Home Health Services LP (CBI Health Group Company).
7. Instead, We Care Home Health Services LP (CBI Health Group Company) would issue requisitions to the Department for services provided at McLaren House, through the Department's Disability Support Program. To do so, the Program's social worker would receive a proposal from We Care Home Health

¹ S.N.B., c. R-10.6 (the "Act")

Services LP (CBI Health Group Company) for the upcoming year of services to be rendered to each resident at McLaren House.

8. The proposal would then be discussed between the Department and We Care Home Health Services LP (CBI Health Group Company). Case Submission forms would then be completed by We Care Home Health Services LP (CBI Health Group Company).
9. The Program Supervisor would then present the proposal plan to the Department's Regional Complex Case Committee. If it is supported, the submission would be provided to the Provincial Complex Case Committee. We Care Home Health Services LP (CBI Health Group Company) would then submit an invoice to the Program's social worker who registers the requisitions and sends them for approval to the Program Delivery Manager and also sends the information from the invoice to the NB Housing Regional Corporate Coordinator who makes arrangements for payment of services to other Departments, if any, sharing the costs.
10. While the Department had in its custody and control a copy of the requisitions provided by We Care Home Health Services LP (CBI Health Group Company) in 2018, which provided a breakdown of the cost of care provided, it was not amenable to disclosing these records to the Applicant as disclosure would be an unreasonable invasion of the residents' privacy as per s. 21 of the Act.
11. Accordingly, the McLaren House was not specifically subject to the Service Agreement at that time, as it is not an individual's personal home, but a residential home for a group of individuals requiring highly specialized care under the Department's umbrella; however, as explained further below, the Department nevertheless relied on this Service Agreement as its spending authority to compensate We Care Home Health Services LP (CBI Health Group Company) for services rendered at McLaren House.
12. It was based on the above that the Department responded to the Applicant's Request by stating that a contract did not exist for any health services providers such as We Care Home Health Services LP (CBI Health Group Company) in relation to McLaren House; however, the Department only indicated that services were provided by requisitions without fully explaining what this meant to the Applicant.

II ATTEMPTS TO INFORMALLY RESOLVE COMPLAINT

13. During our attempts to informally resolve the complaint, the Department explained, as it cannot requisition services with companies that don't have a contract/service agreement with the Department, the Department relied on the March 2017 Service Agreement as authority to receive invoices and requisitions from We Care Home Health Services LP (CBI Health Group Company) for services rendered

at McLaren House, even though neither the Department or We Care Home Health Services LP (CBI Health Group Company) were bound to follow the terms of the Agreement and/or its appendices, including the compensation structure found therein.

14. The investigator assigned to the complaint therefore deemed the Service Agreement to be relevant to the Applicant's Request, as she believed it consisted of a previous iteration of a contract regarding services being offered at McLaren House.
15. While the Department was reluctant to disclose a copy of the Service Agreement as it did not believe it relevant to the Request, it did in the end disclose a copy of the Agreement to the Applicant by way of a revised response, with redactions made to certain information pursuant to ss. 21 and 22 of the Act. Additionally, the Department provided some limited explanations to the Applicant as to how We Care Home Health Services LP (CBI Health Group Company) was being compensated by the Department regarding the services offered at McLaren House, being through requisitions.
16. As per our Office's informal resolution process, the Applicant was then asked for feedback as to whether the additional information was a satisfactory outcome to his complaint. The Applicant indicated that it was not, as the compensation information found in the Service Agreement was redacted pursuant to s. 22 and therefore, the Applicant still had no idea of the amount of money the Department being spent for services rendered at McLaren House.
17. As the complaint could not be informally resolved, the matter was remitted to me for my review.

III FORMAL INVESTIGATION

18. Upon being remitted a complaint, I review both the Applicant's and the Department's comments made during the informal resolution process to determine whether to launch a formal investigation, which I would do if I was of the view, at that time, that the Applicant has not received the access to which he or she is entitled to under the Act. If, however, I believe the Applicant has received access to all the information he or she can have under the Act, I would refuse to conduct a formal investigation and close the complaint file.
19. Upon being remitted this complaint, I reviewed the entire file and decided to conduct a formal investigation of the complaint, I was not certain at that time whether the Applicant had received access in full to all requested and relevant information. I therefore notified both the Department and the Applicant that I would be conducting a formal investigation and invited their representations. In response, the Department wished to meet to discuss the matter.

20. During our meeting, I explained that the Applicant was seeking to discover the amount of money the Department has spent in providing care for residents of McLaren House, but to date, it had not received any information in relation to the cost of care at the McLaren House.
21. We invited the Department to provide additional explanations to the Applicant regarding the requisitions compensation structure established by the Department for services provided at McLaren House, as well as the total amount of care of its residents for the year 2018. In my view, disclosure of this information would not be an unreasonable invasion of the residents' privacy as it would not reveal any personal information.
22. Further to the meeting, the Department indicated it was amenable to providing more detailed explanations to the Applicant regarding the compensation structure for McLaren House; however, while the Department was also amenable to disclosing the range of cost of care for Disability Support Program clients per year, it was not amenable to disclosing the total cost of care to McLaren House residents for the year 2018, as proposed by our Office, as it believed doing so would be an unreasonable invasion of the residents' privacy, as it would reveal their personal health information. This information was disclosed to the Applicant, and he expressed his dissatisfaction with the information received.
23. With regards to the Service Agreement, given that the compensation structure set out therein does not apply to the services provided by We Care Home Health Services LP (CBI Health Group Company) at McLaren House, I will refrain from ruling on whether the redactions made by the Department to the Agreement were properly made under ss. 21 and 22 of the Act for the purposes of this Report of Findings. Instead, I will focus my findings solely to determine whether disclosure of the total cost of care for residents at McLaren House for the year 2018 is an unreasonable invasion of their privacy under s. 21 of the Act.

IV ANALYSIS AND FINDINGS

24. The Department argues that disclosing the total cost of care for 2018 of residents at McLaren House would be unreasonable invasion of their privacy, as the public would be able to infer the amount of care provided to each resident, given their small number. The Department contends that the amount of care paid would reveal the residents' personal health information, as it would allude to the amount of care services each resident obtained during the year.
25. "Personal health information" falls within the definition of "personal information" under the Act, which describes personal information to mean record information about an identifiable individual; however,

the term “personal health information” it is not further defined. Instead, it is defined in the *Personal Health Information Privacy and Access Act*² to mean:

“personal health information” means identifying information about an individual in oral or recorded form if the information

(a) relates to the individual’s physical or mental health, family history or health care history, including

genetic information about the individual,

(b) is the individual’s registration information, including the Medicare number of the individual,

(c) relates to the provision of health care to the individual,

(d) relates to information about payments or eligibility for health care in respect of the individual, or eligibility for coverage for health care in respect of the individual,

(e) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any body part or bodily substance,

(f) identifies the individual’s substitute decisionmaker, or

(g) identifies an individual’s health care provider.

26. Pursuant to this definition, while it appears that paragraph (d) describes information about payments as being personal health information, I do not believe this provision applies to the matter at hand as that provision also requires that the payments be in respect to the individual in question. In this matter, it is not the specific residents that are paying for their health care; rather, it is being paid through the Department’s Disability Support Program. Therefore, in my view, disclosure of the total payment information would not fall within the definition of personal health information or personal information.
27. Furthermore, as stipulated in both definitions of “personal information” and “personal health information” the information must be about an identifiable individual or that is identifying. Under the *Act*, this means information that identifies an individual or which it is reasonably foreseeable in the circumstances could be utilized, either alone or with other information, to identify an individual.
28. Here, the Department argues that due to the small number of residents at McLaren House, disclosure of the total cost of care provided for them would allow members of the public to deduce the amount of care provided to each resident, especially the ones that require more specialized care. I disagree. By disclosing the total cost of care to residents at McLaren House for 2018 would reveal only that: the total cost of care for that year. I fail to see how disclosure of this information could be used either by itself or in combination with any other information that could lead to the identity of the residents. The fact that a resident of McLaren House that requires more specialized care over another resident may already be known to members of the public, and by extension, it is reasonable to deduce that the cost associated

2

with the care for this resident will be higher than the other costs for the other residents; however, this would still not result in identifying the residents or their personal and/or personal health information.

V RECOMMENDATION

29. In light of the above, I recommend that the Department of Social Development disclose the total cost of care paid to We Care Home Health Services LP (CBI Health Group Company) in 2018.
30. As set out in s. 74(2) of the *Act*, the Department is to notify the Applicant of its decision with respect to this recommendation. If the Department decides to accept the recommendation, s. 74(3) requires the Department to comply or make the decision it deems appropriate within 15 days of receipt of this Report.
31. If the Department decides not to accept the recommendation or fails to notify the Applicant of its decision, the Applicant will have right to appeal the matter to the Court of Queen's Bench in accordance with section 75 of the *Act*.

This Report issued in Fredericton, New Brunswick this 14 day of May 2018.



Charles Murray
Integrity Commissioner of New Brunswick