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**Our File: 7100-011959**

Mr. Kent-Daniel Glowinski  
Director, Access to Information and Privacy Directorate  
Aboriginal Affairs and Northern Development Canada  
Les Terrasses de la Chaudière  
10 Wellington Street, Room 517  
Gatineau QC K1A 0H4

MAY 28 2013

Dear Mr. Glowinski:

**Complaints under the *Privacy Act* • Collection, Use, Disclosure  
Dr. Cynthia Noreen Blackstock**

Please find attached the report of findings prepared by this Office with regard to complaints filed by the above-named individual under the *Privacy Act*, received by our Office on March 19, 2012. In light of the facts surrounding these complaints, we are reporting our findings, as involving Aboriginal Affairs and Northern Development Canada (AANDC) and Justice Canada (DOJ), in one report.

Following the investigation into the complaints, our Office has concluded as follows:

- On the first matter, being the allegation that officials from AANDC and DOJ monitored a significant number of the complainant's public speaking engagements, and then disseminated detailed reports of her remarks to a vast number of personnel within both departments, we render **no finding**. The information in question did not constitute "personal information" under the *Privacy Act*, and as such, there could be no improper collection or dissemination of such information.



- On the second complaint, being the allegation that officials from AANDC and DOJ repeatedly accessed and monitored the complainant's social media feeds, in particular her personal Facebook page, we find the complaint to be **well-founded**.
- On the third complaint, being the allegation that officials from AANDC repeatedly accessed her Indian status records from the Government of Canada's Indian status registration database, where no issues relating to her Indian status existed, we find the complaint to be **not well-founded**.

For details on the investigation and the rationale for our conclusions, please see the attached report of findings.

This concludes this Office's investigation of the complaints. If you have any questions or comments about this letter, please contact Ms. Sue Lajoie, Director General, Investigations (Privacy Act) at 613.995.7290.

Sincerely,

A handwritten signature in black ink, appearing to read "Chantal Bernier".

Chantal Bernier  
Assistant Commissioner

Attachment



7100-011959, 7100-012015

**Report of Findings**

Investigation into the personal information handling practices of the Department of Aboriginal Affairs and Northern Development Canada and the Department of Justice Canada, in respect of Dr. Cynthia Blackstock



## REPORT OF FINDINGS

Our Files: 7100-011959, 7100-012015

### Complaints under the *Privacy Act* (the "Act")

1. The complainant has alleged that the Department of Aboriginal Affairs and Northern Development Canada (AANDC) and the Department of Justice Canada (DOJ), collectively referred to hereafter as the "respondents", contravened section 4 of the *Privacy Act* (the "Act"), having engaged in the systematic and deliberate collection of her personal information for purposes not directly related to a government operating program or activity.
  
2. The complainant has further alleged that the respondents contravened sections 7 and 8 of the Act by having used and disclosed personal information under their control, for purposes other than for which it was collected (or for a use consistent with that purpose) without her consent. More specifically, the complainant has alleged that:
  - a) Officials from AANDC and DOJ "purposefully and surreptitiously monitored a significant number of her public speaking engagements, and then disseminated detailed reports of her remarks to a vast number of personnel within both departments";
  
  - b) Officials from AANDC and DOJ "repeatedly accessed and monitored her social media feeds, in particular her personal Facebook page, which contained not only her personal information but also that of her family, friends and colleagues, and then distributed reports of her online postings to a vast number of personnel within both departments"; and



- c) Officials from AANDC "repeatedly accessed her Indian status records from the Government of Canada's Indian status registration database, which contained not only her personal information but also that of a number of family members, where no issues relating to her Indian status existed".
3. It is the complainant's position, based on records she obtained from AANDC through a request for access to information under the *Privacy Act*, that the above activities were undertaken as part of an effort to uncover an alleged ulterior motive that the complainant's employer may have had when it filed a human rights complaint against the Government of Canada.

## Background

4. The complainant is the Executive Director of the First Nations Child and Family Caring Society (the "Caring Society"), a non-profit organization engaged in research, policy development and advocacy for First Nations agencies that serve the well-being of Aboriginal children, youth and families. She is also an Associate Professor at the University of Alberta, with teaching and research interests in (among other subjects) First Nations child welfare, indigenous theory, and human rights advocacy.
5. AANDC is one of the federal government departments responsible for meeting the Government of Canada's obligations and commitments to First Nations, Inuit and Métis, and for fulfilling the federal government's constitutional responsibilities in the North.
6. DOJ is co-respondent in this complaint. It supports the Minister of Justice who is the official legal adviser of the Governor General and the legal member of the Queen's Privy Council for Canada as well as the Attorney General of Canada. Lawyers with the DOJ provide legal advice to the Government and represent the Crown in courts and before administrative tribunals.



7. Since February 2007, the Caring Society has been engaged in litigation against the Government of Canada. On February 23, 2007, the Caring Society and the Assembly of First Nations filed a human rights complaint with the Canadian Human Rights Commission (CHRC) in which they alleged that the inequitable funding of child welfare services on First Nations reserves amounts to discrimination (the "initial complaint"). In October 2008, the CHRC referred the initial complaint to the Canadian Human Rights Tribunal (the "Tribunal") which began hearing the complaint in September 2009. The respondents have filed a judicial review application of the CHRC decision to refer the matter to the Tribunal; this application has been stayed pending the outcome of proceedings before the Federal Court of Appeal referred to below.
8. In 2011, the Tribunal dismissed the initial complaint based on a jurisdictional motion filed by the respondents. Subsequently, three applications for judicial review of that ruling were filed with the Federal Court. In April 2012, the Federal Court granted the applications for judicial review and set aside the Tribunal's ruling. The matter was remitted back to a differently constituted panel of the Tribunal for re-determination on April 18, 2012. The respondents filed an appeal to the Federal Court which dismissed the appeal without costs on March 11, 2013.
9. In February 2011, the complainant filed a separate human rights complaint alleging that AANDC had engaged in retaliation against her.
10. In October 2012, further to the Federal Court remitting the matter to a new panel before the Canadian Human Rights Tribunal, the Tribunal amended the initial complaint with respect to funding to also include retaliation allegations made by the complainant.
11. The hearing of the Tribunal with respect to the initial complaint (including the retaliation allegations) commenced on February 25, 2013.



12. Since 2010, the complainant has made six requests to AANDC for access to her personal information (of varying scopes and for differing timeframes) pursuant to section 12 of the Act. On July 6, 2011, the complainant filed a request with AANDC for access to her personal information for the period June 9, 2010 to June 22, 2011. According to the complainant, the request was made in order to help determine whether or not she was being retaliated against by AANDC and to provide evidence in her litigation against the Government of Canada. AANDC's response to the complainant's July 2011 request for access to personal information was issued in August 2011. That response contained several hundred pages of records, including: records relating to the complainant's public speaking appearances; excerpts and copies of information posted by the complainant to social media sites; and correspondence between officials at AANDC and DOJ related to the complainant and the Caring Society.
13. AANDC's August 2011 response did not include copies of records related to the complainant's status as a Registered Indian. Copies of the complainant's Registered Indian Record were however procured by the complainant through *Privacy Act* requests dated October 2010 and December 2011.
14. In November 2011, in response to media reports in which the complainant alleged that she had been the subject of government "surveillance", AANDC released a public statement indicating that it "routinely monitors and analyses the public environment as it relates to the department's policies, programs, services and initiatives". According to AANDC, this is done so as to "do a better job in service delivery and policy". In regard to the alleged monitoring of the complainant's Facebook page, it was AANDC's position that "social media sites such as Facebook and Twitter are public forums, accessible to all".
15. Concerned with the nature and, in her view, seemingly high volume of data collected by AANDC, the complainant filed several additional requests under the Act for access to her personal information; three with AANDC and one with DOJ. Responses to these requests were significantly redacted – in particular AANDC's



response for access to personal information from April 1, 2009 through March 12, 2012, in which all records deemed relevant to the complainant's request were severed from disclosure pursuant to section 27 of the Act.

16. Following AANDC's response to her *Privacy Act* requests, the complainant filed complaints with our Office with respect to the volume and nature of personal information severed from disclosure. The respondents' application of exemptions under section 26 (information about another individual) and section 27 (solicitor-client privilege) of the Act are under separate investigation by this Office.
17. The complainant has also expressed concern over government surveillance, shadowing and monitoring more generally. This report reflects the results of our investigation into those matters in so much as they involve the collection, use and disclosure of the complainant's personal information (i.e., fair information practices), in keeping with the provisions of the Act.
18. The respondents were notified of the present complaint on March 21, 2012. Representations were received from the respondents from May 2012 through January 2013.
19. In addition to our investigation, on November 17, 2011, the Minister of AANDC stated that AANDC was conducting an investigation of its own into the information handling practices of departmental officials in order to determine "whether privacy rules were respected..." On November 22, 2011, the Minister wrote to our Office confirming that it had undertaken an internal investigation in response to privacy concerns raised in the media relating to the complainant. According to the Minister, AANDC found no evidence of a contravention of the Act.



## **Collection, use and disclosure of information from public appearances**

### ***Allegation***

20. The complainant has alleged that officials from AANDC and DOJ “purposefully and surreptitiously monitored a significant number of her public speaking engagements, and then disseminated detailed reports of her remarks to a vast number of personnel within both departments”.

### ***Application***

21. In making our determination on this allegation, we applied sections 3 and 4 of the Act. Section 3 defines personal information as “information about an identifiable individual that is recorded in any form”. Section 4 states that “no personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution”. This provision is supplemented by policy directives issued by the Treasury Board Secretariat (TBS) which state that institutions must limit the collection of personal information to that which is “directly related to and demonstrably necessary” for the government institution's programs or activities.

### ***Summary of Investigation***

22. In her capacity as the head of the Caring Society, and as a professor and advocate for the rights of First Nations children, the complainant regularly appears as a speaker and participant at events and conferences pertaining to Aboriginal affairs. Records and notices of the complainant's public speaking events are generally available online.
23. In order to investigate the alleged collection, use and disclosure of information from public speaking events, we first sought to determine whether her remarks at public



events, meetings or conferences contained “personal information” within the meaning of section 3 of the Act.

24. For this purpose, we reviewed speaking materials from a sample of events at which the complainant spoke for the period from January 2007 through December 2012, as collected by the respondents or available on-line. We also invited the complainant to provide us with a listing of events that she attended in which she shared information that, in her view, was personal in nature.
25. For each sampled event, we assessed both the content of the presentations and the context in which that information was disclosed.

### ***Analysis***

26. As stated in the opening words of section 3 of the Act, “personal information” is “information about an identifiable individual that is recorded in any form”. In the case at hand, in order for the information shared by the complainant at public speaking events to qualify as her personal information, it must be “about” her.
27. The notion of privacy connotes concepts of intimacy, identity, dignity and integrity of the individual. These concepts are important to bear in mind when determining whether or not information is “about” an individual, as opposed to being “about” something else. In the case at hand, we found that information shared by the complainant at public speaking events was not related to the biographical core of the complainant (i.e., information “about” her as an individual), but rather about something else – the human rights issues affecting First Nations children.
28. More specifically, in reviewing a sample of presentations made by the complainant at public speaking events, we found that generally speaking, in terms of content, information shared by the complainant at public speaking events concerned First



Nations children and families, and the work that her organization and others were undertaking to assist them.

29. Where the information shared by the complainant was not information about her, it was also not information presented or offered as her own, personally. In almost all of the cases we sampled, the complainant was introduced or appeared at the events in question in her professional capacity as the Executive Director of the Caring Society. As such, it would have been (and remains) reasonable to assume that the opinions and views she was disclosing were not being offered as her own – as much as she may have shared them personally – but rather as those of the organization she was representing.
30. Based on jurisprudence, the general opening words of section 3 are the primary source of interpretation of the Act's definition of personal information. Parliament's subsequent enumeration of types of personal information is only intended to illustrate the kind of subject matter encompassed by the general definition. These specific examples are not in any way determinative or exhaustive.
31. In this respect, and in keeping with our analysis above, a reference to paragraph 3(e) of the Act proves insightful. That provision states that personal information includes:
- (e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations. [our emphasis]*
32. Opinions or views may constitute personal information under the Act if they are those of the individual. Like the opening words of section 3 however, paragraph 3(e) of the Act underscores the importance of the *personal* nature of information. It follows that opinions or viewpoints shared or communicated as being on behalf of an organization, would not qualify as the *personal* opinions or views of an individual.



33. Notwithstanding the above, we recognize that an individual, speaking on behalf of an organization, might nonetheless disclose personal information in the course of expressing a professional point of view. In fact, it is rather common for individuals to reveal information about themselves – often humorously or anecdotally – in the course of delivering speeches (or occasionally, to insert their personal views as distinguished from those of the organization they represent). While an individual's personal and professional views are often difficult to disentangle, the process may be reasonably informed by giving regard to the context in which information is shared and the purposes for which it is disclosed.
34. Recognizing the possibility that the complainant may have shared information about herself informally in the course of delivering speeches on behalf of the Caring Society, we looked for, but found no evidence of the respondents' recording or collection of such information in the course of our investigation. Indeed, the content of speeches we reviewed was generally about matters relating to First Nations children and families in Canada and the work that the Caring Society was undertaking on their behalf.
35. We also took note of the capacity in which the complainant appeared or was introduced (i.e., as a private citizen or as the Executive Director of the Caring Society). This inquiry was intended to determine whether or not information shared at the events we reviewed reflected the complainant's own thoughts, or those of the organizations she was representing.
36. The objectively ascertainable purpose for which information was disclosed by the complainant was largely in keeping with the goals and purpose of the Caring Society – that is, to benefit and advance the rights of First Nations children and families. In many cases, the Caring Society's complaint with the Human Rights Tribunal was central to the complainant's public remarks.



37. Given that the information disclosed by the complainant at public speaking events was not information "about" her, and that the views and opinions she offered were made on behalf of the organization she represented for professional purposes, we find that the information in question was not "personal information" within the meaning of the Act.
38. As we have found that the information does not constitute "personal information" under the Act, there could be no improper collection or dissemination of such information.
39. This being said, in our review of the evidence, we did find e-mail exchanges in which staff of the respondents notified other staff of events, meetings or conferences at which the complainant would be speaking or had spoken.
40. Such information could, in our view, constitute the "personal information" of the complainant, in that it does constitute information about her, her activities and her whereabouts. In the case at hand however, it appears that the respondents were collecting and sharing that information in direct relation to the operating programs or activities of AANDC, and in relation to ongoing litigation.

## **Collection, use and disclosure of information from social media**

### ***Allegation***

41. The complainant has alleged that officials from AANDC and DOJ "repeatedly accessed and monitored her social media feeds, in particular her personal Facebook page, which contained not only her personal information but also that of her family, friends and colleagues, and then distributed reports of her online postings to a vast number of personnel within both departments".



### ***Application***

42. In making our determination on this issue, we applied sections 3, 4, 7 and 8 of the Act, along with subsection 69(2). Section 3 defines personal information as "information about an identifiable individual that is recorded in any form". Section 4 states that "no personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution". This provision is supplemented by policy directives issued by TBS which state that institutions must limit the collection of personal information to that which is "directly related to and demonstrably necessary" for the government institution's programs or activities.
43. Section 7 provides that personal information under the control of a government institution shall not, without the consent of the individual, be used by the institution except for the purposes for which the information was obtained or compiled by the institution, or for a use consistent with that purpose.
44. Section 8 provides that personal information under the control of a government institution shall not, without the consent of the individual, be disclosed by the institution except in accordance with certain specified circumstances (as set out in subsection 8(2) of the Act).
45. Subsection 69(2) states that sections 7 and 8 of the Act do not apply to personal information that is publicly available.

### ***Summary of Investigation***

46. Although the parties to the complaint have offered different details surrounding the monitoring of the complainant's personal Facebook page, there does not appear to be any contradiction in the general facts surrounding the allegation above. While the respondents admit to having accessed and monitored the complainant's social media



feeds, they have taken the position that "social media sites such as Facebook and Twitter are public forums, accessible to all".

47. In the course of our investigation, we asked AANDC and DOJ to confirm the dates at which each department began monitoring social media sites belonging to the complainant. We also asked for copies of all screen shots or other personal information captured by the respondents. Last, we asked the respondents for a detailed explanation in support of their monitoring of social media, including a listing of officials (name, title and capacity) within each department who approved or directed such activities.
48. According to AANDC, the department began monitoring social media sites attached to or operated by the complainant in or around February 2010. Network or IT approval to access Facebook.com was granted following the completion of a "Website Access Request Form" on February 18 by a Litigation Case Manager (approved by the then Director of Eastern Litigation Directorate, Litigation Management and Resolution Branch). In its rationale for providing the Litigation Case Manager with access to the external website Facebook.com (i.e., the business case for bypassing network security), AANDC officials provided the following justification:

*The Complainant in the Assembly of First Nations/First Nations Child and Family Caring Society Human Rights Complaint, Cindy Blackstock, is providing details of this action on her personal Facebook page. Given that some of the material in this case has been deemed privileged, this page should be monitored to ensure that sensitive information is not being released to the public.*

49. For its part, DOJ has stated that it too began its monitoring efforts in February 2010. Although no formal record of approval was created, initial approval for the monitoring of "public campaigns and news" was provided by Lead Counsel for the Government of Canada in the Caring Society's human rights complaint. As noted in



correspondence between the employee alleged to have monitored the complainant's social media sites and officials from DOJ's Informatics Branch, the monitoring of the complainant's social media sites was deemed "strategic".

50. At the time that our investigation was initiated, the complainant administered three Facebook pages, listed as follows:

- i. Cindy Blackstock (personal page);
- ii. First Nations Child and Caring Society of Canada (organization page); and
- iii. I am a witness campaign (community page).

51. The first page belongs to the complainant personally. Although it includes a reference to the complainant's title and employer, along with links to the external web pages of the Caring Society and "I am a witness" campaign, according to the complainant, the page was created and populated in support of her own personal pursuits and interests. Although Facebook page types and categories have changed over the past several years, at the time this report was drafted, the page in question was categorized by Facebook as a "personal" page.

52. The second page (organization page), administered by the complainant on behalf of her employer, the Caring Society, is an "open group" page. It is listed as "the official Facebook page of the First Nations Child and Family Caring Society of Canada". Its content is managed by the complainant in her capacity as the Caring Society's Executive Director.

53. The third page (community page), created and administered by the complainant on behalf of the Caring Society, is perhaps best described as a campaign site. It exists to support and promote the Caring Society's human rights case against the Government of Canada. According to the complainant, it is intended to encourage individuals to watch and follow the cases before the Tribunal and Federal Court, and to foster public discourse on the federal government's treatment of First Nations children. It is listed by Facebook as a "community" page.



54. In addition to the three sites mentioned above, the complainant appears prominently on two other Facebook pages: "Cindy Blackstock" (public figure) and "Cindy Blackstock - A Powerful Voice of Justice". According to the complainant, these two sites are not administered by her and have never been under her control.
55. In representations to our Office, the respondents have acknowledged monitoring all three of the complainant-administered accounts: Cindy Blackstock (personal page); First Nations Child and Caring Society of Canada (organization page); and I am a witness (community page). They also acknowledge having accessed and monitored other social media feeds attached to the complainant, including Twitter, YouTube, BlogSpot and Google Alerts (email updates of real time Google results related to the complainant).

### **Analysis**

#### ***Did the respondents collect "personal information" from social media sites?***

56. The respondents have submitted that information posted to the complainant's Facebook page is not "personal information" since that information, in their view, was open to the public. They further submit that:

*It is misleading for the complainant to refer to her Facebook page as "personal" as it refers to the complainant as "Executive Director, First Nations Child and Family Caring Society of Canada", exclusively contains information related to her organization's activities and her organization's litigations against AANDC, and references her aboriginal advocacy website [www.fnwitness.ca](http://www.fnwitness.ca) and organization's website [www.fncaringsociety.com](http://www.fncaringsociety.com).*

57. As indicated above, Section 3 of the Act defines personal information as "information about an identifiable individual that is recorded in any form".



58. In determining whether or not information collected by the respondents from social media sites, including the complainant's personal Facebook page, is "personal information", we first considered whether that information was indeed "about" the complainant. To this end, we asked ourselves whether the complainant was simply the subject of the information collected, or whether the information was related to or concerning the complainant personally.
59. Bearing in mind the above, and based on the results of our investigation, we found that information posted to the three complainant-administered Facebook pages included both personal and non-personal information.
60. Consistent with our analysis above in respect of information disseminated by the complainant at public speaking events, we found that information shared by the complainant on both the Caring Society Facebook page (i.e., organization page) and the "I am a witness" Facebook page (i.e., community page) to be *non-personal* in nature. In both cases, information posted was not "about" the complainant, but rather about the activities and affairs of the Caring Society. Moreover, the information posted to these sites – divulged as the Caring Society, its supporters and its detractors saw fit – was open and available to the general public.
61. In contrast, we found that certain information posted on the complainant's personal Facebook page was in fact "personal information". In our view, select sets of data listed on the complainant's personal Facebook page, in particular information relating to her social network (i.e., friends), personal views, skills, interests, and residency, clearly constitute personal information under the Act. The complainant is an "identifiable individual" and much of the information posted to her personal Facebook page, or derived therefrom, is clearly "about" her. That information, alone or in combination with other information, reveals information about who she is as a person, and not just information related to or attached to her professional responsibilities with the Caring Society. The same can also be said about information related to individuals who corresponded with the complainant using



Facebook, and whose own personal opinions, likes and interests may also have been captured by the respondents.

62. Although the respondents have submitted that it is misleading to characterize the complainant's personal Facebook page as "personal" (in so much as the page refers to the complainant as Executive Director of the Caring Society, and whereas it was at select points in time open to non Facebook users) we find this argument to be unconvincing. The existence of the complainant's professional title and employer – fields open to all Facebook users and availed by many – does not, in our view, materially affect the private nature of the complainant's personal profile. Nor does the public availability of personal information on the Internet render personal information non-personal. A review of the content of the complainant's personal Facebook page would, in our view, lead an objective observer to conclude that the page in question belonged to the complainant personally, and – unlike the Caring Society and "I am a witness" pages – was meant for personal use and consumption.
63. We understand of course that access to the complainant's personal Facebook page was limited to those portions of her profile, at times, left open to both Facebook subscribers and non-subscribers (i.e., the complainant's Facebook "wall"). According to the respondents, AANDC and DOJ officials did not "friend" the complainant so as to obtain access to her full Facebook profile or personal information contained therein.
64. We also acknowledge that the complainant had a personal responsibility to ensure that settings on her Facebook page were set at such a level so as to maintain some privacy interest in the information she wished to protect. In light of the frequent and substantial changes to the security and privacy settings by Facebook Inc. to its on-line platform, our investigation was unable to pinpoint the precise nature of the complainant's privacy settings at those times at which her Facebook page may have been accessed by the respondents. Having said that, we recognize from our own investigations of Facebook (in particular, those undertaken around the same time



frame as the alleged monitoring), that default settings have not always been easy for users to find or set.

65. Given these facts, we found evidence in the course of our investigation that AANDC and DOJ officials knew (or should have known) that they were accessing the complainant's *personal* profile, and that certain information obtained from their monitoring activities would constitute personal information under the Act. In the process of approving social media monitoring, for example, both departments make reference to the need to access the complainant's "personal Facebook page", as distinguished from those sites operated by the Caring Society. By all indications, it was clear to officials in both departments that they were accessing and compiling information about the complainant personally.
66. In the case at hand, the complainant administered three Facebook accounts, two of which were clearly intended for public consumption. Unlike information on the Caring Society organization page and the "I am a witness" campaign page – both of which have consistently remained open to the public and which are clearly aimed at public consumption – information on the complainant's personal Facebook page was not, according to the complainant, intended for general or widespread dissemination.
67. Although privacy settings on the complainant's personal Facebook page have varied over the past several years, the complainant appears to have made reasonable efforts to restrict its contents to individuals listed as "friends". Such efforts were particularly pronounced when it became known to the complainant that the respondents were visiting her personal Facebook page. According to the complainant, efforts to restrict information listed on her personal Facebook page demonstrate that she intended for her Facebook contents to be restricted to only her Facebook "friends". As stated by the complainant in the course of our investigation: "... I am well aware of how to contact the Government of Canada should I wish to share information/questions or concerns with them and have regularly exercised that opportunity via letters, emails to government Ministers..."



68. The evidence which we reviewed in the course of our investigation revealed that the respondents collected personal information belonging to the complainant from social media sites. As previously noted, since February 2010, the respondents have repeatedly accessed, viewed, read, copied and recorded personal information from the complainant's personal Facebook page. This information, which included multiple "screen shots" or page copies, along with page excerpts, was retained in a recorded form.

69. Based on the above, we find that AANDC and DOJ did collect personal information in some recorded form in the course of monitoring social media relating to the complainant.

***Was personal information collected in relation to the complainant limited to that directly related to an operating program or activity of AANDC or DOJ?***

70. The collection of personal information by federal institutions is governed primarily by section 4 of the Act. It states that "no personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution".

71. Section 4 is supplemented by directives on privacy practices issued by TBS which serve to support the application of the Act. These directives state that institutions must limit the collection of personal information to that which is "directly related to and demonstrably necessary" for the government institution's programs or activities. While guidelines and directives do not have the same force as legislated standards, they are indicative of the practices and policies which the Government of Canada promotes and expects government officials to adhere to in the collection of personal information.

72. In applying the above requirements to the case at hand, the respondents would be expected to have a demonstrable need for each piece of personal information they



collected about the complainant, as associated with a particular program or activity – regardless of whether or not such information is publicly available. As will be discussed below, personal information that is publicly available is only exempted under subsection 69(2) of the Act from provisions governing use and disclosure (i.e., sections 7 and 8 of the Act). Restrictions on the *collection* of personal information continue to apply, whether the personal information is publicly available or not.

73. In their submissions to our Office, the respondents have stated that any personal information collected in relation to the complainant was acquired in direct relation to the operating programs or activities of AANDC and or DOJ. According to AANDC, its employees “continually survey the public environment” in order to “develop sound public policy” and to ensure that they remain “responsive and responsible” to stakeholder needs. In this regard, they offered the following:

*It is especially important to ensure that AANDC employees consider and analyze the views, opinions and perspectives of public, high-profile activists such as the complainant. To ignore the complainant would be irresponsible on the part of a federal institution.*

74. Whereas AANDC submits that its collection of personal information from the complainant’s Facebook page was for purposes of policy research, according to DOJ, its collection of information relates to the department’s role in providing litigation services to AANDC (in particular, its role in responding to the human rights complaints involving the complainant and the Caring Society).
75. In their first response to our investigation the respondents stated that their monitoring of social media was a direct result of the “complainant breaching orders and directions of the Canadian Human Rights Tribunal” where, in May 2010, the complainant “posted confidential cross-examination transcripts of an AANDC employee on her personal Facebook page”.



76. In our view, there is some evidence that public policy research and preparation for litigation before the Tribunal motivated the collection of the complainant's personal information from social media sites. In the context of ongoing litigation, we note that the courts have held that a party initiating litigation provides implied consent to a certain amount of probing of their private affairs for the proper determination of the litigation. Generally speaking, courts will allow entities, including the government, some leeway to probe into the private affairs of an individual who has brought litigation against them in order for the truth to be ascertained.
77. Notwithstanding the above, the findings of our investigation do not suggest a reasonable basis for collecting certain unrelated pieces of personal information gathered from the complainant's personal Facebook page, particularly information related to the complainant's friends, personal views, skills, interests, and residency. In our view, such information is not obviously relevant to either policy development or the litigation in question.
78. While we accept that the process of gathering evidence in the context of litigation may require the review of information, including publicly accessible documents, in order to determine what is and what is not relevant, such a determination should, in our view, be made at or soon after the review of that information. Where possible, information clearly unrelated to an operating program or activity of a federal institution should be redacted or rendered anonymous at the point of collection.
79. In the case at hand, we would have expected the respondents to have had controls in place to preclude the incidental collection of personal information that was clearly unrelated to their operating programs or activities. Indeed, notwithstanding the respondents own apparent concern with the incidental collection of personal information, DOJ and AANDC failed to take into account measures that would have helped limit their collection of personal information from social media sites to that related to the complainant only, and which was directly relevant to the complainant's litigation with the Government of Canada.



80. Furthermore, accepting the fact that the complainant had posted portions of confidential transcripts of cross-examinations to her personal Facebook page in May 2010 (a disclosure deemed 'unauthorized' by the Tribunal), and that such a disclosure may have warranted the monitoring of the complainant's personal Facebook page thereafter, we note that AANDC began monitoring the complainant's personal page several months earlier, in or around February 2010. While the respondents claim that the monitoring would have been appropriate prior to May 2010 in so much as the Caring Society was engaged in litigation with the Government of Canada, the complainant did not file *her* retaliation complaint until February 2011.
81. In light of the facts of the case, it is not obviously clear what relevance the personal information available on the complainant's personal Facebook page could have had to AANDC's policy development, or the government's defense of the Caring Society's human rights claim. The lack of transparency surrounding the collection of personal information by the respondents from the complainant's Facebook page would seem to violate the spirit, if not the letter of the Act.

### ***Finding and Recommendations***

82. Based on the above, we find the complaint to be **well-founded**. AANDC and DOJ did collect select sets of personal information, unrelated to their ordinary operating activities, in the course of monitoring social media related to the complainant. We did not however find sufficient evidence to support the allegation that those records were widely distributed to a vast number of personnel within both departments.
83. In our Preliminary Report of Findings we recommended that:
- a) The respondents cease and desist from accessing and viewing personal information posted to the complainant's personal Facebook page and/or other social media sites except where demonstrably necessary in direct relation to an



operating program or activity of AANDC or directly related to the litigation conducted by the Department of Justice on behalf of the Attorney General of Canada;

- b) Personal information belonging to the complainant (or any other individual) which has been collected by the respondents and which is unrelated to an operating program or activity of AANDC or the ongoing litigation, be destroyed, to the extent permitted by law. We recognize that certain information already collected must be retained to meet evidentiary and other requirements of the rules of court;
- c) The respondents develop and implement internal policies and guidelines governing employee access to social media sites for the collection of personal information, as related to their respective institutions' operating programs or activities, further to those provided by the Treasury Board of Canada, Secretariat's in its *Guideline for External Use of Web 2.0*.

84. The respondents have accepted our recommendations in full.

## **Use and disclosure of Status Indian records**

### ***Allegation***

- 85. The complainant has alleged that officials from AANDC "repeatedly accessed her Indian status records from the Government of Canada's Indian status registration database, which contained not only her personal information but also that of a number of family members, where no issues relating to her Indian status existed".



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### **Summary of Investigation**

86. The complainant is a member of a First Nation. She is also a Status Indian, registered with the federal government as an Indian according to the terms of the *Indian Act*. Status Indians are also known as Registered Indians.
87. In October 2010, the complainant filed a request with AANDC for access to her personal information for the period from January 2005 through October 2010. In December 2011, the complainant filed a separate request with AANDC for access to her personal information for the period from July 9, 2011 to December 12, 2011. AANDC's response to each of those requests contained several hundred records, including copies of the complainant's Registered Indian Record, as at November 4, 2010 and November 17, 2011 respectively.
88. Registered Indian Records are official documents created by AANDC and stored within the department's Indian Register. The Indian Register contains various elements of personal information, most importantly the names of all Status Indians. It also contains records of a registered individual's so-called "life events", such as his or her date of birth, death, marriage, adoption, and or the details of transfers between First Nation communities. In order to determine an individual's entitlement as a Status Indian, AANDC must confirm that the individual is a descendant of a recognized Indian band member. As such, the Indian Register may also contain personal information related to the registered individual's family tree, including the names, birth dates and status of his or her spouse, children, siblings, parents and grandparents.
89. The Indian Registry System (IRS) is the official system of record for the identification of all Status Indians in Canada. Under the *Indian Act*, AANDC is responsible for maintaining the Indian Register within IRS. As Registrar, AANDC is the sole authority for determining which names are added, deleted or omitted from the Register. It is also responsible for ensuring that access to the IRS is restricted to authorized officials only, and for ensuring the security and safeguard of information



contained therein. In addition to AANDC officials, the IRS may be accessed by authorized personnel from other government departments, and by Indian Registration Administrators in First Nation membership offices.

90. In the course of our investigation, we asked AANDC to provide our Office with a certified log, audit trail or history of all incidents of access to the complainant's Registered Indian Record, along with a description of the reasons supporting each access incident for the period from February 2010 through March 2012 (the approximate dates during which the complainant is alleged to have been under government surveillance).
91. Although the personal information records of the complainant released by DOJ to our Office in the course of investigation did not include a copy of the complainant's Registered Indian Record, we nonetheless asked the department to provide us with a written statement confirming that it did not have in its possession now (or for the period under review) a copy of the same.
92. In response to our requests for a copy of AANDC's IRS logs, AANDC provided the following statement:

*The Indian Registration System (IRS) does not contain an audit trail or log. The [AANDC] litigation team did not seek to review Ms. Blackstock's status record, did not review any such record and has no knowledge of any review of Ms. Blackstock's status record.*

93. DOJ provided a similar statement on behalf of its litigation team, as follows: "[We] have never seen Cindy Blackstock's Indian status record and don't have a copy of it in [our] possession".



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### ***Application***

94. In making our determination on this issue, we applied sections 7 and 8 of the Act. Section 7 provides that personal information under the control of a government institution shall not, without the consent of the individual, be used by the institution except for the purposes for which the information was obtained or compiled by the institution, or for a use consistent with that purpose.
95. Section 8 provides that personal information under the control of a government institution shall not, without the consent of the individual, be disclosed by the institution except in accordance with certain specified circumstances (as set out in subsection 8(2) of the Act).

### ***Analysis***

96. As per the Indian Registry System, the complainant was affirmed as a Status Indian and declared entitled to the rights and benefits of registration in February 1996. As per the complainant, any personal information provided in support of her application for Indian Status would have been provided prior to that date, for the explicit and exclusive purpose of supporting a determination on her eligibility. Although the IRS maintains records of a registered individual's life events, no such events are noted in the complainant's record past February 2, 1996.
97. What then explains the production of the complainant's Registered Indian Record as of November 4, 2010 and November 17, 2011 (as evidenced in her requests for access to personal information of October 2010 and December 2011)?
98. In the complainant's view, the production of the Registered Indian Record, as printed on the dates above, suggests that the record had been periodically accessed by AANDC for purposes other than for those for which the information had originally been compiled. More specifically, the complainant alleges that her Registered Indian



Record was used as part of a larger effort to uncover ulterior motives that the Caring Society is deemed to have had when it filed a human rights complaint against the Government of Canada.

99. In answer to the above, the respondents have steadfastly maintained that neither department accessed the complainant's Registered Indian Record in the course of (or for purposes of) litigation. AANDC officials did surmise however that any of the several *Privacy Act* requests submitted by the complainant could have triggered a search of the IRS by AANDC. It is the respondents' position that copies of the complainant's November 4, 2010 and November 17, 2011 Registered Indian Record were accessed and printed only in fulfillment of the complainant's own request for her personal information on file.
100. According to AANDC, the complainant's IRS record was first produced by the Indian Registrar's Office for inclusion in her personal information package (as pertaining to her request dated October 2010) given the general nature of that request (i.e., for "any document or communication with personal information...produced between 2005 to present").
101. The complainant's IRS record was produced a second time for inclusion in the complainant's personal information package, as pertaining to her request dated December 2011. The production of her IRS in this instance followed public allegations by the complainant of improper access to her IRS record and an internal investigation by AANDC into the matter.
102. According to AANDC, the complainant's IRS record was not produced as a result of *Privacy Act* requests dated July 2010, July 2011 and March 2012, as there were "no dealings" between the Registrar's Office and the complainant during the periods of time covered by those requests.



103. In investigating the above, we met directly with the Indian Registrar and a member of his technical staff. The purpose of the meeting was to better understand the manner in which records from IRS are produced further to an access to information request. We also inquired into system access controls which safeguard the personal information contained in IRS. Finally, we drew upon and reviewed select portions of the complainant's IRS record for purposes of determining whether representations by AANDC concerning audit logs and document production were accurate.

104. Our discussions with the Registrar, his Office and other AANDC officials, did not result in any information suggesting that the complainant's Registered Indian Record had been periodically accessed by AANDC for purposes other than for those for which the information had originally been compiled. Simply put, in the absence of an audit trail or log documenting instances of access to the complainant's IRS record, it was impossible to determine whether or not that record had been used or accessed inappropriately.

105. Nor did we find evidence to support the allegation that the complainant's records were being used as part of a larger effort to uncover ulterior motives that the Caring Society is deemed to have had when it filed a human rights complaint against the Government of Canada.

### ***Finding and Recommendation***

106. In the absence of sufficient and objective evidence to support the complainant's allegations, we find the complaint to be **not well-founded**. Based on the evidence put forth by the parties to the complaint, the production of the complainant's status certificate in her access to information packages for October 2010 and December 2011 do not appear to be tied to litigation efforts by the Government of Canada against the Caring Society.



107. Notwithstanding the above, in our Preliminary Report of Findings we recommended that AANDC implement, activate and monitor audit trails for IRS. Given the sensitivity of personal information contained within the system, the use of audit logs is, in our view, critical to ensure that the collection, use and disclosure of status Indian information remains limited to purposes relating to an operating program or activity of AANDC.
108. AANDC has accepted our recommendation. We understand from the Indian Registrar that the present system deficiency has been identified and brought to the attention of senior officials, and that audit trail capabilities have been recommended for inclusion in the next iteration of IRS.

### Summary of Dispositions

- On the first matter, being the allegation that officials from AANDC and DOJ purposefully and surreptitiously monitored a significant number of the complainant's public speaking engagements, and then disseminated detailed reports of her remarks to a vast number of personnel within both departments, we render **no finding**. The information in question did not constitute "personal information" under the Act, and as such, there could be no improper collection or dissemination of such information.
- On the second complaint, being the allegation that officials from AANDC and DOJ repeatedly accessed and monitored the complainant's social media feeds, in particular her personal Facebook page, we find the complaint to be **well-founded**.
- On the third complaint, being the allegation that officials from AANDC repeatedly accessed her Indian status records from the Government of Canada's Indian status registration database, where no issues relating to her Indian status existed, we find the complaint to be **not well-founded**.