



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I93-020P

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

July 16, 1993



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Community and Social Services (the Ministry).

The complainant is employed by the Ministry, in a facility providing services to young offenders (the facility). The complainant stated that the Ministry breached her privacy on three separate occasions, which we have outlined below.

Incident #1

In 1989, a young offender attacked the complainant. In May 1992, the complainant received an award in the amount of \$15,000 from the Workers' Compensation Board (WCB), to compensate her for the injuries she sustained as a result of the attack. The WCB notified the facility, in writing, of the complainant's award.

In August 1992, the complainant returned to the facility, after completing a one-year secondment. Upon her return, the complainant learned that the Program Manager of the facility had disclosed the amount of her WCB award to other staff of the facility. The complainant subsequently met with the Program Manager in September 1992, at which time he admitted to the breach. In October 1992, the Program Manager wrote to the complainant apologizing for the breach of confidentiality. He also stated: "As you are aware we have decided to change our practice around such sensitive issue (sic) dealing with our employees".

The complainant stated that although the Program Manager indicated in his letter of apology that the facility's practice of dealing with sensitive employee issues would change, he verbally stated that they would not change. The complainant, therefore, was concerned that the Program Manager might breach her privacy again when she received an expected second award from the WCB. As a result of her concern, the complainant indicated that she would like the Program Manager and all other staff of the facility to receive training in the area of freedom of information and the protection of personal privacy.

We presented the Ministry with the complainant's request for training. Counsel for the Ministry responded as follows:

This incident has been admitted and an apology was directed to (the named complainant). I have approached my client regarding the issue of training in the area of freedom of information and the protection of personal privacy. They have agreed to participate in training.

A Human Resources representative with the Ministry stated that the training would likely be delivered by the end of the summer of 1993.

In this respect, we wish to commend the Ministry for agreeing to present the suggested training.

Incident #2

Further to the Program Manager disclosing the information concerning the complainant's WCB award, the complainant filed a grievance. In November 1992, a Stage II grievance meeting was held. The Deputy Minister appointed a Human Resources Manager from the Ministry to hear the grievance, at this Stage II meeting. Also in attendance were:

- the Program Manager,
- Acting Superintendent of the facility,
- the Human Resources representative referred to in Incident #1,
- the complainant, and
- two union representatives.

The complainant stated that the Human Resources Manager opened the meeting by stating that she had come to the meeting with no other information than her knowledge of the process at Stage II. The Human Resources Manager then read the grievance out loud, and sometime afterward revealed the amount of the complainant's WCB award. The complainant stated that, at that point in time, not even her union representatives were aware of the amount of her award. The complainant believed that either the Program Manager, Acting Superintendent or the Human Resources representative informed the Human Resources Manager of this information prior to or during a break in the meeting. The complainant believed that this was an improper disclosure of her personal information.

Incident #3

In September 1992, the complainant applied for the position of School Co-ordinator at the facility. The complainant stated that only one other employee had also applied for this vacancy. When the complainant's then supervisor telephoned her to inform her that she was not the successful candidate, the complainant replied, in jest: "Yeah, I know. (The named successful candidate) plays golf with (the named Program Manager) and I don't."

In December 1992, the successful candidate prepared a Christmas video for the young offenders at the facility. It dealt with the fictional character Ebenezer Scrooge, from the popular work of fiction, "A Christmas Carol". The characters in the video were played by various employees from the facility.

While the complainant did not appear in the video, nor has she seen the video, she nonetheless believed that she was depicted as Scrooge, in one scene of the video. The complainant has based her belief on what other employees, who have seen the video, have told her.

We reviewed an edited copy of the video. The scene which concerns the complainant involves the employee who had portrayed Scrooge walking into what the complainant has stated was her former supervisor's office. The following conversation ensued.

- Supervisor "I called you here today for something, (named employee who played Scrooge). You know, you've been a great worker over the years. Never miss a day. Never sick. Never sick. Always here. You know, working hard. But, I gotta tell yeah something. The School Co-ordinator's position. I gotta tell yeah that (the named successful candidate)'s the best man for the job. I hate to tell you that, (named employee)."
- Scrooge Scrooge responds by loudly exclaiming the name of the successful candidate twice, in apparent disbelief.
- Supervisor "Yeah, yeah. That's the guy."
- Scrooge "The guy you golf with once a week."
- Supervisor "At least."
- Scrooge "Well, it's obvious that playing golf with management, ah, get's you a lot further than hard work and dedication. That's it. No more Mr. Nice guy for me. See ya."

As Scrooge leaves the supervisor's office, the supervisor shrugs his shoulders and then pretends to swing at a golf ball.

The complainant believed that since she was the only unsuccessful candidate in the School Co-ordinator competition, it was she who had been depicted in this scene of the video. She believed that this was an improper use of her personal information.

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

Incident #1

Since the Ministry has already admitted to the breach and since it has agreed to provide the requested training, it was not necessary for us to address this incident further.

Incident #2

- (A) Was the amount of the WCB award "personal information", as defined in section 2(1) of the Act?
- (B) Was the amount of the WCB award disclosed to the Human Resources Manager, in accordance with section 42 of the Act?

Incident #3

- (A) Was the information contained in the video "personal information", as defined in section 2(1) of the Act?
- (b) Did the Ministry use the personal information, in accordance with section 41 of the Act?

RESULTS OF THE INVESTIGATION

Incident #2

Issue A: Was the amount of the WCB award "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

...

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

...

The Ministry submitted that the \$15,000 WCB award does constitute personal information, as defined in section 2(1) of the Act. We concur with the Ministry. Since the WCB award related to a financial transaction in which the complainant had been involved, it is our view that this information met the requirements of paragraph (b) of the definition of "personal information", in section 2(1) of the Act.

Conclusion: The amount of the WCB award was personal information, as defined in section 2(1) of the Act.

Issue B: Was the amount of the WCB award disclosed to the Human Resources Manager, in accordance with section 42 of the Act?

Section 42 of the Act prohibits the disclosure of personal information by an institution, except in certain circumstances. (For the full text of section 42, please refer to Appendix A.)

As previously mentioned, the complainant believed that the amount of her WCB award was disclosed to the Human Resources Manager by either the Program Manager, Acting Superintendent or the Human Resources representative, prior to or during a break in the Stage II grievance meeting. The complainant believed that this was an improper disclosure of her personal information.

Counsel for the Ministry submitted the following:

The Ministry states that the \$15,000 award was disclosed to (the named Human Resources Manager). It was disclosed to her during a Stage II grievance meeting. The information was disclosed during an exchange of information by both parties.

Counsel for the Ministry also submitted that " ... disclosure ... to the designee [i.e., the Human Resources Manager] ... was permitted by s. 42(d) of the Freedom of Information and Protection of Privacy Act".

We contacted the Human Resources Manager. She stated that her role as the Deputy Minister's designee, during the Stage II grievance meeting, was largely to act as fact-finder and decision-maker. As fact-finder, she stated that she was responsible for allowing as much information to come forward as was needed to render her decision.

The Human Resources Manager stated that she first learned of the amount of the WCB award from the actual WCB letter. She stated that during the fact-finding phase of the Stage II meeting, the complainant shared a large body of information about herself. The Human Resources Manager recalled that at one point the complainant passed some correspondence to her. The Human Resources Manager believed that this correspondence included the WCB letter containing the amount of the award, however, she stated that she was not "crystal clear" on this. The Human Resources Manager confirmed, however, that she did not have the letter prior to the meeting.

The complainant verified that she shared a lot of information during the Stage II meeting, but denied passing the WCB letter to the Human Resources Manager. She stated that she could not have done this because she did not even have the WCB letter with her, at this meeting.

We were unable to determine how exactly the Human Resources Manager came to know of the amount of the complainant's WCB award.

Section 42(d) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

...

(d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

...

In support of its position that it acted in accordance with section 42(d) of the Act, Counsel for the Ministry submitted the following:

(The named Human Resources Manager) was sitting as the Deputy Minister's designee at the Stage II meeting. The Stage II meeting is the second step in the grievance procedure set out at Article 27 of the Collective Agreement between the Government of Ontario and the members of the Ontario Public Service Employees Union. Article 27.3.3 of the Collective Agreement states that the Deputy Minister's designee shall hold a meeting within 15 days of the receipt of a grievance and shall give the grievor her decision in writing within 7 days of the meeting.

... Disclosure of the \$15,000 WCB award was made to the designee to enable her to determine the issue, as directed by Article 27.3.3 of the Collective Agreement.

The Human Resources Manager stated that the issue to be determined at the Stage II meeting was the breach of the complainant's confidentiality. The complainant confirmed this. The Human Resources Manager also stated that not knowing the amount of the WCB award would not have prevented her from coming to a decision of the grievance, although she emphasized that looking at all of the information was not inconsistent with her role.

It is our view that although the value of the WCB award was closely tied to the issue being grieved, the Human Resources Manager did not "need" to know the value of the WCB award to come to a decision of the grievance. Therefore, the Ministry could not be said to have complied with section 42(d) of the Act.

We reviewed the remaining exceptions to section 42 and found that none applied to this disclosure of personal information. We are therefore of the view that had one of the Ministry employees in question disclosed the amount of the WCB award to the Human Resources Manager, the disclosure would not have been in compliance with section 42 of the Act.

Conclusion: We were not able to determine how exactly the Human Resources Manager came to know of the amount of the WCB award. However, if one of the Ministry employees in question had disclosed the amount of the award to the Human Resources Manager, this disclosure would not have been in compliance with section 42 of the Act.

Incident #3

Issue A: Was the information contained in the video "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

The Ministry submitted the following:

... the film does not contain (the named complainant's) personal information as described in s. 2(1) of the Freedom of Information and Protection of Privacy Act. Section 2(1) indicates that personal information means recorded information about an identifiable individual. The Ministry submits that the film did not identify (the named complainant) in any manner. The film dealt with a fictional character, Ebenezer Scrooge, from a popular work of fiction, "A Christmas Carol". (The named complainant) was not mentioned or depicted in any manner in the film. Therefore, the personal information alleged by (the named complainant) to have been released does not fulfil the definition of personal information as found in the Act.

The fact that the complainant was not the successful candidate in the School Co-ordinator competition would be recorded somewhere in the records of the facility; this information would also be information "about" the complainant. It is, therefore, our view that since the complainant was the only person who did not get the School Co-ordinator's position, any reference to this fact could only be associated with the complainant.

We spoke with two individuals who saw the video. Person A said that everyone in the facility knew that it was only the complainant and the successful candidate who had applied for the School Co-ordinator's position. She also said that it was general knowledge that the complainant did not get the job. She concluded that the complainant had been depicted in the video.

Person B said that the complainant had been indirectly referred to as Scrooge, in the video. He said that he could see a correlation between the video and a real life situation. He explained that the successful candidate got the School Co-ordinator's position, and the complainant did not. He said that as soon as he saw the video, he concluded that they were "taking a dig at (the named complainant)". He added that "it was too close to reality".

It is thus our view that while the complainant was not identified by name in the video, she was nevertheless "identifiable". We, therefore, find that the information contained in the video was personal information, as defined in section 2(1) of the Act.

Conclusion: The information contained in the video was "personal information", as defined in section 2(1) of the Act.

Issue B: Did the Ministry use the personal information, in accordance with section 41 of the Act?

Section 41 of the Act prohibits the use of personal information, unless one of three conditions exist. It states:

An institution shall not use personal information in its custody or under its control except,

- (a) where the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 42 or under section 32 of the Municipal Freedom of Information and Protection of Privacy Act, 1989.

We reviewed section 41 of the Act and found that none of the exceptions listed applied to this use of personal information. Accordingly, it is our view that the Ministry's use of this personal information was not in compliance with section 41 of the Act.

Conclusion: The Ministry's use of the personal information was not in compliance with section 41 of the Act.

SUMMARY OF CONCLUSIONS

- The amount of the WCB award was personal information, as defined in section 2(1) of the Act.
- We were not able to determine how exactly the Human Resources Manager came to know of the amount of the WCB award. However, if one of the Ministry employees in question had disclosed the amount of the award to the Human Resources Manager, this disclosure would not have been in compliance with section 42 of the Act.
- The information contained in the video was "personal information", as defined in section 2(1) of the Act.
- The Ministry's use of the personal information was not in compliance with section 41 of the Act.

RECOMMENDATION

We recommend that the Ministry take steps to ensure that personal information in its custody or under its control is used only in accordance with section 41 of the Act.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner/Ontario with proof of compliance with the above recommendation.

Original signed by: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

July 16, 1993 _____
Date

APPENDIX A

42. An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part II;
- (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
- (f) where disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent;
- (k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the next-of-kin or legal representative of the employee;
- (l) to the responsible minister;

- (m) to the Information and Privacy Commissioner; and
- (n) to the Government of Canada in order to facilitate the auditing of shared cost programs.