



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

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# INVESTIGATION REPORT

INVESTIGATION I93-047P

MINISTRY OF THE SOLICITOR GENERAL AND  
CORRECTIONAL SERVICES

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**October 27, 1993**



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## INTRODUCTION

### **Background of the Complaint**

This investigation was initiated as a result of a complaint concerning the Ministry of the Solicitor General and Correctional Services (the Ministry).

Specifically, the complainant was concerned about attendance review letters regarding sick time that had been sent to bargaining unit staff at one of the Ministry's correctional facilities. These letters were part of the process of the reviewing, monitoring and controlling of the attendance of all employees within the facility. Employees whose rate of absenteeism was becoming unacceptable were the subject of these letters.

The complainant was concerned, however, that the Ministry had not at any time notified the individuals involved, including himself, that the personal information contained in these attendance review letters had been collected. He was also concerned that the attendance review letters had subsequently been summarized in a list which was then posted on a notice board.

The complainant believed that these actions were in contravention of the Freedom of Information and Protection of Privacy Act (the Act).

### **Issues Arising from the Investigation**

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was notice of the collection of the personal information contained in the attendance letters given in accordance with section 39(2) of the Act?
- (C) Was the personal information in the summary list disclosed in accordance with section 42 of the Act?

## RESULTS OF THE INVESTIGATION

**Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?**

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,  
.....

- (h) the individual's name if it appears with other personal information relating to the individual...

Attendance review letters and the summary list contained names of individuals together with information about their absences due to sickness. It is our view that this information satisfied paragraph (h) of the definition of personal information in section 2(1) of the Act.

**Conclusion:** The information in question was "personal information" as defined in section 2(1) of the Act.

**Issue B: Was notice of the collection of personal information contained in attendance review letters given in accordance with section 39(2) of the Act?**

Section 39(2) of the Act states:

Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of a public official who can answer the individual's questions about the collection.

The Ministry acknowledged that notice of the collection of attendance information which was later included in the attendance letters was not given to staff who were hired before the Act was in effect. This included the complainant.

However, in response to our draft report, the Ministry submitted that in its view, sufficient notice was given to the complainant, since information about the collection appears in the 1993 -1994 Directory of Records. This publication contains a list of particular records held by each institution under the Act in addition to the list of common records found in most institutions.

The Ministry stated that the Directory of Records contains a discussion of the "General Attendance Recording System(CARS)". This discussion includes "the location, legal authority, type of information collected, the principle uses and the user (who would be the contact person) as well as the telephone number and address of the Freedom of Information Co-ordinator."

The Ministry submitted that the intent of the Directory of Records is to give notice to the public, as well as employees, of the type of information collected and maintained by an institution. It stated that since the Directory is a public record and is available in the Ministry's correctional facility, this forms due and sufficient notice of its collection of attendance information to employees and meets the requirements of section 39(2) of the Act.

Section 39(2) states in part that "[w]here personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, **inform the individual.....**" (emphasis added).

It is our view that including the information in the Directory of Records is not sufficient notice of the Ministry's collection. Such an approach would require that individuals regularly check the Directory of Records to determine what information is being collected rather than being informed of the collection by the Ministry. This approach is not consistent with the purposes of section 39(2) which is intended to make individuals aware of information which is being collected and the purpose(s) for the collection. It is our view, therefore, that the Ministry did not give notice of its collection of personal information to employees hired before the implementation of the Act.

**Conclusion:** Notice of the collection of personal information contained in the attendance letters was not given in accordance with section 39(2) of the Act to employees who had been hired prior to the implementation of the Act.

**Issue C: Was the personal information in the summary list disclosed in accordance with section 42 of the Act?**

Under the Act, personal information in the custody or control of an institution may be disclosed only in the specific circumstances outlined in section 42.

In this case, the Assistant Superintendent of the facility had prepared a list of employees who were establishing a pattern of unacceptable attendance. This list was fastened to a clip board and given to the Unit Supervisor for his information and reference in the event that the listed employees failed to report for duty as assigned.

The Ministry acknowledged that the list was then inappropriately placed in a rather public area where several employees had access to the information.

We have examined the provisions of section 42 of the Act and have found that none were applicable to this disclosure of the personal information in the summary list.

We note, however, that upon receipt of a verbal complaint from the complainant, the Assistant Superintendent ordered the list removed and placed in a confidential envelope for the restricted use of the Supervisor. The Assistant Superintendent also apologized verbally to the complainant.

**Conclusion:** The disclosure of personal information in the summary list was not in accordance with section 42 of the Act.

## **SUMMARY OF CONCLUSIONS**

- The information in question was "personal information" as defined in section 2(1) of the Act.

- Notice of the collection of personal information contained in the attendance letters was not given in accordance with section 39(2) of the Act to employees who had been hired prior to the implementation of the Act.
- The disclosure of personal information in the summary list was not in accordance with the Act.

## **RECOMMENDATIONS**

We recommend that:

- (1) the Ministry provide notice of the collection of attendance information also to those employees hired before the implementation of the Act in accordance with section 39(2) of the Act.
- (2) the Ministry include information about the requirements of the Act for the disclosure of personal information in any policy or guidelines on the reviewing, monitoring and controlling of employees' attendance.

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

Original signed by: \_\_\_\_\_  
Susan Anthistle  
Compliance Review Officer

October 27, 1993  
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Date