



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 I93-010P

### Ministry of Health

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September 29, 1993

**\*\* Please note that portions of this report have been edited to protect the privacy those involved.**



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# INTRODUCTION

## Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Health (the Ministry).

The complainant, an employee of a mental health centre (the Centre) operated by the Ministry, was named as the respondent in a complaint filed under the Ontario Public Service's Workplace Discrimination and Harassment Prevention (WDHP) Program. The complainant believed that the Ministry disclosed his personal information in the context of the WDHP complaint, contrary to the Freedom of Information and Protection of Privacy Act (the Act).

The complainant's concerns have been organized into four separate disclosures. They are outlined below in the section entitled "Results of the Investigation".

## RESULTS OF THE INVESTIGATION

### DISCLOSURE #1

Since the allegations filed against the complainant were found to be unsubstantiated, the complainant's counsel (Counsel) objected to the Deputy Minister's disclosure of the WDHP investigation summary report and the witnesses' statements to the following three employees of the Centre: Manager of Administration, Medical Services (the Manager); Clinical Director and Psychiatrist in Chief (the Director); and the Administrator.

The issues were:

**Issue A: Was the information in the investigation summary report and the witnesses' statements "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,

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The Ministry submitted: "Yes, some of the witnesses' statements and the WDHP investigation summary report contain (the named complainant's) personal information as defined in the Act. (The named complainant's) name is not disclosed in the report".

We concur with the Ministry. While the complainant's name does not appear in the report, he is nonetheless identifiable. The complainant was also identifiable in the witnesses' statements. The investigation summary report and the witnesses' statements both contain the views or opinions of other individuals about the complainant, as well as other personal information relating to the complainant.

Therefore, in our view, some of the information in the investigation summary report and the witnesses' statements met the requirements in paragraphs (g) and (h) of the definition of personal information in section 2(1) of the Act.

**Conclusion:** Some of the information in the investigation summary report and the witnesses' statements was personal information, as defined in section 2(1) of the Act.

**Issue B: Was the disclosure of the complainant's personal information to the Manager, the Director and the Administrator, in accordance with section 42 of the Act?**

The complainant informed us that he had learned from a conversation with the Manager that the investigation summary report and the witnesses' statements had been disclosed to the Manager, the Director and the Administrator.

The Ministry advised that a copy of the investigation summary report was disclosed to the Administrator who then met with the Manager and the Director. At this meeting, they discussed certain advice the Administrator had received from an earlier meeting with representatives of the Employment Equity Office, Human Resources Branch, and legal counsel of the Ministry. Although the comments allegedly made by the complainant were unsubstantiated, the Administrator was advised that remedial action decisions had been made based upon the investigation summary report regarding the use of inappropriate language in the workplace.

The Ministry advised that when the Administrator met with the Manager and the Director, the Administrator referred to the content of the investigation summary report, but did not disclose the actual report to these two individuals. The Ministry advised that this reference was limited to examples of comments allegedly made by the complainant that would not be considered acceptable in the workplace. This was done to convey to the Manager and the Director an understanding of why they had been requested to advise the complainant not to use language that others might find inappropriate in the workplace. The Ministry maintains that the witnesses' statements were not provided to the Administrator, and the Administrator was therefore unable to provide them to the Manager and the Director.

The Ministry submitted that the disclosure of the investigation summary report to the Administrator, and the disclosure by the Administrator of examples of comments to the Manager and the Director, were in accordance with section 42(d) of the Act. 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;

According to the Ministry, the Administrator was the senior manager responsible for implementing the remedial actions that were identified from the investigation summary report findings. For this reason, the disclosure was in accordance with section 42(d) of the Act. Further, the Ministry submitted that the disclosure to the Manager, as the complainant's direct supervisor, and to the Director, as the Manager's supervisor, was for the purpose of providing them with an understanding of why they were required to advise the complainant regarding inappropriate language in the workplace. The Ministry considered that it would be remiss if these remedial actions were not implemented. The Ministry submitted that, since these employees needed the information in the performance of their duties, the disclosures were in accordance with section 42(d) of the Act.

It is our view that the Ministry has a responsibility to provide a workplace free from discrimination and harassment. Since the disclosures to the Administrator, the Manager and the Director were for the purpose of implementing remedial action in an effort to provide a workplace free from discrimination and harassment, it is our view that each of these employees needed the personal information in the performance of their duties and that the disclosures were necessary and proper in the discharge of the Ministry's functions.

The witnesses' statements were not disclosed to the Administrator, nor were they disclosed to the Manager or the Director.

**Conclusions:** The personal information in the investigation summary report was disclosed, in accordance with section 42(d) of the Act.

The witnesses' statements were not disclosed to the Administrator, nor were they disclosed to the Manager or the Director.

## **DISCLOSURE #2**

Counsel for the complainant stated that, with regard to the interview questions, the WDHP Investigator (the Investigator):

... repeated to those being interviewed the most vile and vulgar statements which had been made by other third parties. Then the investigator sought to obtain the interviewee's knowledge, information or belief in regard to those statements of others, concerning my client, which had been repeated to her by others.

Counsel further stated that some of the interview questions asked of the interviewees disclosed personal information about the complainant:

... in putting the questions in a manner that suggests an answer at a minimum, it discloses to the person to whom the question is put the fact that a specific allegation has been made by somebody about [the named complainant]. That, in my view, constitutes improper disclosure of personal information.

The issues were:

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

The interview questions put to each witness by the Investigator varied depending upon the witness. Counsel advised of the types of interview questions that he objected to. Of the questions Counsel noted, it is our view that those which contained comments allegedly made by someone other than the complainant did not contain the complainant's personal information. The Ministry submitted that some of the interview questions contained the complainant's personal information.

We have carefully reviewed all of the interview questions. It is our view that the information in some of these questions met the requirement in paragraph (h) of the definition of personal information in section 2(1) of the Act (for the complete text of paragraph (h) see **Issue A, Disclosure #1**).

**Conclusion:** The information in some of the interview questions was personal information, as defined in section 2(1) of the Act.

**Issue B: Was the disclosure of the complainant's personal information via the interview questions, in accordance with section 42 of the Act?**

The Ministry submitted that the interview questions were constructed using the exact language/choice of words used by the complainant, respondent and witnesses in the WDHP investigation. The Ministry stated that in a case like this one where the witness interviews were conducted at least 16 months after some of the events allegedly took place, it is essential that the witness be provided an adequate amount of information to permit recollection.

The Ministry informed us that many of the interview questions which Counsel took exception with were designed to determine if the witness was indeed present during an alleged incident, if the incident did in fact occur as the Investigator had been told, and to determine the credibility of the witness who had provided the information. A number of the interview questions which Counsel noted concern with were not asked of anyone, since the witnesses for whom they had been prepared refused to meet with the Investigator, or could not be reached.

For those questions that were asked of the interviewees, and which contained the complainant's personal information, the Ministry has relied upon section 42(c) of the Act for the disclosure. Section 42(c) states:

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

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

Counsel advised us of the types of questions which he felt disclosed the complainant's personal information. Of the interview questions Counsel noted, the Ministry maintains that some including the following were never asked of interviewees:

- It has been alleged that you have had your own "dealings" with [the named complainant] and that (it is alleged) he made a rather unusual comment either to you or in your presence. Do you recall the incident and what was said? Please explain.
- Did you hear him call [the named individual who filed the WDHP complaint] a "bitch"?

We examined **all** of the remaining interview questions, including those noted by Counsel. In our view, the information collected by the Ministry regarding the alleged harassment was obtained for the purpose of conducting a WDHP investigation into the allegations made against the complainant. In our view, it would not have been possible for the Investigator to have properly investigated and determined the validity and accuracy of the allegations unless some details of the allegations, including the complainant's personal information, were made known to the individuals interviewed. After carefully reviewing each of the interview questions which contained the complainant's personal information and which were asked of the interviewees, it is our view that the disclosure of the complainant's personal information was for the purpose for which the information was obtained or compiled. Therefore, it is our view that the disclosure was in accordance with section 42(c) of the Act.

**Conclusion:** The disclosure of the complainant's personal information in the interview questions was in accordance with section 42(c) of the Act.

### **DISCLOSURE #3**

Counsel questioned the disclosure of the complainant's personal information to eight different individuals. The Investigator's notations from the investigation "Series of Events" indicate that the Investigator contacted these eight individuals during the investigation. Based upon this, Counsel stated that the complainant's personal information was improperly disclosed to each of these individuals.

The issues were:

**Issue A: Was the information discussed with the eight individuals "personal information", as defined in section 2(1) of the Act?**

The Ministry provided us with details of the Investigator's discussions with these individuals (please refer to Issue B, below, for the particulars of these discussions). In our view, some of the information discussed with five of the eight individuals constituted the complainant's personal information, in accordance with paragraph (h) of the definition of personal information in section 2(1) of the Act (for the complete text of paragraph (h) see **Issue A, Disclosure #1**).

**Conclusion:** Some of the information discussed with five of the eight individuals was personal information, as defined in section 2(1) of the Act.

**Issue B: Was the personal information in question disclosed, in accordance with section 42 of the Act?**

The Investigator supplied the Ministry with information on the nature of her discussions with these eight individuals. With regard to the Investigator with the WDHP Unit of the Management Board Secretariat (MBS) and the Policy Analyst with the Employment Equity/WDHP department of MBS, we determined, based on the Ministry's submissions, that while the Investigator had discussed the WDHP investigation with them, she had not disclosed the complainant's personal information. We also determined that the Investigator could not recall speaking with the secretary identified by Counsel. The Ministry, nonetheless, submitted that while it is possible that a discussion between the Investigator and the secretary took place, it likely would not have involved the complainant's personal information as the contact would have been on a purely clerical basis.

The Ministry has relied upon section 42(d) of the Act for the disclosure of the complainant's personal information to the remaining five individuals. Section 42(d) permits disclosure of personal information "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".

The Ministry has submitted the following for each individual:

**Project Consultant/WDHP Coordinator, Employment Equity Office, Ministry of Health:** The Investigator contacted the Coordinator to request clarification on WDHP policy and procedures and other WDHP related information. Some of the information disclosed was the complainant's personal information, as it related to the investigation into the allegations against him.

According to the Management Board Directive on the WDHP Program (D-7-1), the WDHP Coordinator in each Ministry is responsible for "acting as a point of contact for all persons responsible for implementing this directive" and Investigators are responsible for "sending written reports of the investigation findings to the coordinator and deputy head".

**Deputy Director, Legal Services Branch, Ministry of Health:** The Investigator contacted the Deputy Director to share information made necessary by Counsel's letters and/or concerns, to allow for a written Ministry legal response. As well, draft responses to Counsel's letters were sent to the Deputy Director for legal input, advice and approval. Some of the information disclosed was the complainant's personal information, as Counsel's letters related to the investigation into the allegations against his client, who was named in his letters.

The disclosure of the complainant's personal information was necessary to obtain legal advice where legal issues were raised.

**Counsel, Legal Services Branch, Ministry of Health:** The Investigator contacted the Ministry's Counsel to inquire about the complainant's Counsel's request for a court reporter to be present during interviews with his client and to try and set a meeting date with Counsel and the complainant; to request legal representation at an interview with Counsel; and to obtain legal input, advice and approval regarding draft responses to Counsel's letters. Some of the information disclosed was the complainant's personal information, as Counsel's letters related to the investigation into the allegations against his client, who was named in his letters.

The disclosure of the complainant's personal information was necessary to obtain legal advice where legal issues were raised.

**Unit Coordinator, WDHP Unit, Management Board Secretariat (MBS):** The Investigator contacted the MBS Unit Coordinator regarding procedural clarification for conducting the WDHP investigation. Since the Unit Coordinator had obtained a copy of the complaint form containing the complainant's name and the allegations from the Ministry's WDHP Coordinator, the complainant's personal information may have been disclosed during some of the discussions.

The WDHP Directive (D-7-1) states that the Ministry WDHP Coordinator is responsible for "referring complaints to the Discrimination/Harassment Prevention Unit of MBS, within two working days of receipt". The MBS Unit Coordinator, being the head of the Unit, is the designated person to receive complaints. The Directive also states that MBS is responsible for "advising and supporting ministries on the application of this directive".

**Named employee with the Centre:** The Investigator contacted the named employee to request his assistance in convincing a reluctant witness, who reported to him, of the need to cooperate with the WDHP investigation by meeting with the Investigator. In order to explain this request for assistance, the Investigator believes that she probably disclosed the names of the complainant and the respondent in the WDHP investigation. The Investigator also interviewed the named employee as the complainant's department or group leader. Some of the information disclosed was the complainant's personal information.

The Investigator disclosed only the personal information necessary for the named employee to respond in his roles as a witness and a supervisor, within the proper Ministry function of investigating a complaint under the WDHP directive.

Based on the above information, the Ministry submitted that disclosing the complainant's personal information was necessary in the discharge of the Ministry's function of investigating a complaint under the WDHP directive. The Ministry advised that each employee needed the personal information in the performance of his or her duties and, therefore, the disclosures were in accordance with section 42(d) of the Act.

It is our view that the Ministry has the responsibility of providing a workplace free from discrimination and harassment. To meet this responsibility, the Ministry conducts WDHP investigations, as required. In our view, the disclosure of the complainant's personal information in the above instances was necessary to conduct a WDHP investigation. Further, it is our view that the four individuals, who were Ministry employees, each needed the particular personal information disclosed to them, in the performance of their duties. The disclosure of the



complainant's personal information to these four individuals was, therefore, in accordance with section 42(d) of the Act.

In order for a disclosure to be in accordance with section 42(d) of the Act, the disclosure must be made to an officer or employee of the institution. Since the Unit Coordinator, WDHP Unit, MBS, was not an officer or employee of the Ministry, section 42(d) of the Act did not apply. Therefore, we examined the application of section 42(c) of the Act to this disclosure. Section 42(c) permits disclosure of personal information "for the purpose for which it was obtained or compiled...".

In our view, the complainant's personal information was obtained for the purpose of conducting a WDHP investigation into the allegations made against him. The WDHP Unit Coordinator, who had a copy of the complaint form, acts as an advisor to the Ministry. The Investigator disclosed the complainant's personal information while obtaining procedural clarification from the Unit Coordinator, acting in his advisory capacity, for the purpose of conducting the WDHP investigation. Therefore, in our view, the complainant's personal information was disclosed for the purpose for which it was obtained or compiled, in accordance with section 42(c) of the Act.

**Conclusion:** The complainant's personal information was disclosed, in accordance with section 42 of the Act.

#### **DISCLOSURE #4**

Counsel stated that the Investigator improperly disclosed the complainant's personal information to the individual who had filed the WDHP complaint. Counsel based his belief in this regard on the notations made by the Investigator in her investigation "Series of Events", regarding her discussions with the person who had filed the complaint.

The issues were:

**Issue A: Was the information discussed by the Investigator with the individual who had filed the WDHP complaint "personal information", as defined in section 2(1) of the Act?**

We reviewed the "Series of Events" and examined all of the notations made by the Investigator which refer to her discussions with the individual who had filed the WDHP complaint. Of these notations, only two contained the complainant's personal information. They are:

1. July 16 - refers to notes on file. The notes on file show that the Investigator informed the individual that Counsel had requested her statement and had been referred to the Ministry's Freedom of Information Office to obtain access.
2. August 24 - the Investigator told the individual that the complainant had been sent another copy of her complaint form and a severed version of her statement. The Investigator also commented to the individual that a formal Freedom of Information request had been made by the complainant.

In our view, the information discussed by the Investigator with the individual who had filed the WDHP complaint, with respect to these two notations, met the requirement in paragraph (h) of the definition of personal information in section 2(1) of the Act (for the complete text of paragraph (h) see **Issue A, Disclosure #1**).

**Conclusion:** The information discussed by the Investigator with the individual who had filed the WDHP complaint was personal information, as defined in section 2(1) of the Act.

**Issue B: Did the Investigator disclose the complainant's personal information to the individual who had filed the complaint, in accordance with section 42 of the Act?**

The Ministry submitted that the disclosure of the complainant's personal information by the Investigator to the individual who had filed the WDHP complaint, was in accordance with section 42(c) of the Act. Section 42(c) permits disclosure of personal information "for the purpose for which it was obtained or compiled...".

The Ministry submitted that the complainant's personal information was obtained or compiled for the purpose of conducting the WDHP investigation. According to the Ministry, part of conducting a WDHP investigation includes keeping the complainant and the respondent informed of the details of the investigation. Therefore, the complainant's personal information was disclosed for the purpose for which it was obtained or compiled, which was to keep the complainant and the respondent informed during the course of the investigation.

While there may be cases where the disclosure of the name of a requester may contravene the Act, it is our view that in the circumstances of this complaint, the Ministry disclosed the personal information in question for the purpose for which it had been obtained or compiled, which was to keep the parties to a WDHP complaint informed during the course of the investigation. Thus, it is our view that the Ministry disclosed the complainant's personal information, in accordance with section 42(c) of the Act.

**Conclusion:** The Ministry disclosed the complainant's personal information to the individual who had filed the WDHP complaint, in accordance with section 42(c) of the Act.

## **OTHER MATTERS**

Counsel raised a concern that the information recorded by the Investigator in the witnesses' statements was inaccurate. He stated: "I understand that in the course of the investigation, interview notes were made and, when reviewed by the interviewee, any discrepancies pointed out were not necessarily corrected by the investigator. As a result, I believe that the Ministry has created seriously erroneous records." In support of his position, Counsel provided us with a copy of a letter written by one of the interviewees which, he submitted, demonstrates that the information in the witness statement was not accurate.

We reviewed the interviewee's letter. In our view, the interviewee requested that certain information be **included** in her witness statement because it did not fully reflect all that she had **wanted** to say. The interviewee did not say that the information in her statement was incorrect. The interviewee also signed her statement, at the time of her interview, stating that her responses as recorded by the Investigator were accurate.

We would like to refer the complainant to section 36(2) of the Act which sets out an individual's right of correction to his/her personal information (see Appendix A for full text).

## **SUMMARY OF CONCLUSIONS**

### **DISCLOSURE #1**

- Some of the information in the investigation summary report and the witnesses' statements was personal information, as defined in section 2(1) of the Act.
- The personal information in the investigation summary report was disclosed, in accordance with section 42(d) of the Act.

The witnesses' statements were not disclosed to the Administrator, nor were they disclosed to the Manager or the Director.

### **DISCLOSURE #2**

- The information in some of the interview questions was personal information, as defined in section 2(1) of the Act.
- The disclosure of the complainant's personal information in the interview questions was in accordance with section 42(c) of the Act.

### **DISCLOSURE #3**

- Some of the information discussed with five of the eight individuals was personal information, as defined in section 2(1) of the Act.
- The complainant's personal information was disclosed, in accordance with section 42 of the Act.

### **DISCLOSURE #4**

- The information discussed by the Investigator with the individual who had filed the WDHP complaint was personal information, as defined in section 2(1) of the Act.
- The Ministry disclosed the complainant's personal information to the individual who had filed the WDHP complaint, in accordance with section 42(c) of the Act.

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

September 29, 1993 \_\_\_\_\_  
Date

## APPENDIX A

36. (1) Every individual has a right of access to,
- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
  - (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.
- (2) Every individual who is given access under subsection (1) to personal information is entitled to,
- (a) request correction of the personal information if the individual believes there is an error or omission;
  - (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
  - (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.