



**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 I93-043P**

### **MINISTRY OF HEALTH**

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# INTRODUCTION

## Background of the Complaint

This investigation was initiated as a result of a complaint concerning one of the Ministry of Health's psychiatric hospitals (the Hospital).

For medical reasons, the complainant, an employee of the Hospital, requested employment accommodation under the Employment Equity Program. The accommodation would enable her to continue to work in her capacity at the Hospital. During the course of arranging the complainant's accommodation needs, the complainant's supervisor, the Director of Psychology (the Director), disclosed the complainant's medical diagnosis to certain Hospital staff.

The complainant was concerned about the disclosures of this personal information, stating that they were contrary to 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) Were the Director's disclosures of the complainant's personal information 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...

The complainant's counsel (the Counsel) provided a number of documents which identified the complainant by name together with information about her medical condition. Two of these documents were memoranda. One, dated November 6, 1991, was written by the Director to the Director, Materials Management, and copied to the Assistant Administrator, Clinical Services (the Assistant Administrator). The other, dated June 30, 1992, was written by the Director to the

complainant and copied to the Assistant Administrator, the Employment Equity Advisor, and the Personnel department.

After reviewing the documents provided, it is our view that they contained information which met the requirements in 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: Were the Director's disclosures of the complainant's personal information in accordance with section 42 of the Act?**

We determined that, of the documents provided by the Counsel, only the two memoranda disclosed the complainant's personal information to Hospital staff.

While the complainant stated that the Director had also disclosed a doctor's note to the Employment Equity Advisor even after "confirming that she [the Director] would not invade my [the complainant's] privacy", the information provided by Counsel did not support that such a disclosure took place. In addition, the Hospital submitted that the Director stated that she did not remember disclosing the doctor's note, and the Employment Equity Advisor did not recall seeing such a doctor's note and did not have a copy of any such note in her files.

Under the Act, personal information in the custody or control of an institution can not be disclosed except in the specific circumstances outlined in section 42.

With respect to the Director's disclosure of the complainant's personal information in the memorandum dated November 6, 1991, to the Director, Materials Management, and the Assistant Administrator, and the disclosure in the memorandum dated June 30, 1992, to the Assistant Administrator, the Employment Equity Advisor, and the Personnel department, the Hospital stated that it had relied on section 42(d) of the Act for both of these disclosures.

Section 42(d) 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;

The Hospital submitted that each of the employees to whom the complainant's personal information was disclosed, needed the information in the performance of his or her duties.

Specifically, the Assistant Administrator, as the supervisor of the Director, needed the personal information to support the complainant's request for accommodation. The Employment Equity Advisor, as the Hospital's liaison person with Employment Equity, needed the information in

order to advocate for the complainant's need for accommodation and to communicate with the Employment Equity Co-ordinator's Office in the Ministry of Health. The Hospital advised that the Employment Equity Advisor was the same person as the Director, Materials Management. With respect to the disclosure to staff in the Personnel department, the Hospital stated that its Personnel or Human Resources department had a role in supporting the needs of employees, such as, in this case, employee accommodation. For the purpose of maintaining employee files, Personnel department staff required a copy of the memoranda containing the personal information in question.

The Hospital maintained that, therefore, the Director's disclosures of the complainant's medical diagnosis to the above parties were in accordance with section 42(d) of the Act since they needed the information in order to perform their duties, i.e. to plan the accommodation needs of the complainant.

In our view, providing for the accommodation needs of an employee under the Employment Equity Program was an administrative function of the Hospital. As a part of this function, the Assistant Administrator had the responsibility of ensuring that the complainant's accommodation needs were met and of approving the purchase of necessary equipment. In order to be able to do so, he needed the complainant's medical information. It is, therefore, our view that the disclosures in the two memoranda of the complainant's medical information to the Assistant Administrator, as the Director's supervisor, were to an officer who needed the information in the performance of his duties and the disclosures were necessary and proper in the discharge of one of the Hospital's administrative functions. Therefore, the disclosures to the Assistant Administrator were in accordance with section 42(d) of the Act.

However, it is our view that the disclosure in the November 6, 1991 memorandum to the Director, Materials Management, was not in accordance with section 42(d) of the Act. The memorandum sent to the Director, Materials Management, by the Director was for the purpose of purchasing the necessary accommodation equipment for the complainant. It is our view that the Director, Materials Management, did not need to know any details of the complainant's medical condition in order to purchase equipment which had already been noted in an attached purchase order. In addition, while the Hospital advised that the Director, Materials Management, and the Employment Equity Advisor were the same person, this was not the case in November 1991 when the disclosure occurred. The role of Employment Equity Advisor was a special assignment that was not assumed by the Director, Materials Management, until the spring of 1992.

It is also our view that the disclosure of the complainant's medical diagnosis in the June 30, 1992 memorandum to the Personnel department was not in accordance with section 42(d) of the Act. The Hospital stated that the disclosure was necessary since the Personnel department had a role in supporting the needs of the complainant and in maintaining employee records. In our view, it was unnecessary for the complainant's specific medical diagnosis to be disclosed to the Personnel department in order for the department to support her accommodation needs or to maintain records. Therefore, in our view, the disclosure to staff in the Personnel department was not a disclosure to an officer or employee who needed the complainant's medical information in the performance of his or her duties and was, therefore, not in accordance with section 42(d) of the Act.

With respect to the disclosure of the June 30, 1992 memorandum to the Director, Materials Management, in her capacity as Employment Equity Advisor, it is our view that the disclosure was also not in accordance with section 42(d) of the Act. At that time, the Employment Equity Advisor was not yet involved in the accommodation process. It was not necessary for her to communicate with the Employment Equity Co-ordinator's Office in the Ministry of Health since she was not at that time, advocating for the complainant's accommodation needs. Therefore, in our view, the disclosure of the complainant's medical diagnosis in the June 30, 1992 memorandum to the Employment Equity Advisor was, at that time, not a disclosure to an officer who need the information in the performance of her duties and therefore, it was not in accordance with section 42(d) of the Act.

In our view, except for the disclosures to the Assistant Administrator, the disclosures of the complainant's medical information were not in accordance with section 42(d) of the Act. In our view, no other provisions of section 42 applied to the disclosures.

**Conclusion:** The disclosures of the complainant's medical information to the Assistant Administrator, were in accordance with section 42 of the Act.

The disclosures of the complainant's medical information to staff in the Personnel department, to the Director, Materials Management both as the Director, Materials Management and in her capacity as Employment Equity Advisor were 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.
- The disclosures of the complainant's medical information to the Assistant Administrator, were in accordance with section 42 of the Act.

The disclosures of the complainant's medical information to staff in the personnel department, to the Director, Materials Management both as the Director, Materials Management and in her capacity as Employment Equity Advisor were not in accordance with section 42 of the Act.

## RECOMMENDATIONS

We recommend that the Ministry:

1. take steps to ensure that Hospital staff are aware of the limited purposes for which the disclosure of personal information is permitted under the Act.

2. establish a guideline which sets out the steps to be taken by Hospital Staff when processing an application for employee accommodation under the Employment Equity Program. The guideline should clearly set out to whom an applicant's personal medical information may be disclosed.

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  
Manager of Compliance

November 23, 1993  
Date

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