



**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 I92-84M**

### **A Municipality**

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**September 30, 1993**



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# INTRODUCTION

## Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Municipality's Ambulance Service. The complainant is an employee of the Ambulance Service.

The complainant attended an ambulance call, which caused him to experience "critical incident" stress. As a result of this, the complainant used the services of the Ambulance Service's staff psychologist (the Psychologist). The complainant then filed a claim with the Workers' Compensation Board (the WCB).

The complainant stated that after the claim had been filed, his supervisor (the Supervisor) at the Ambulance Service had collected and then disclosed his personal information to the WCB, contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act). According to the complainant, although the Psychologist had assured him of confidentiality, the Psychologist had also disclosed his personal information to the Supervisor and the WCB, contrary to the Act.

The complainant also submitted that his personal information was presently accessible to all management staff.

## 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?
- (B) Was the collection of personal information by the Supervisor in accordance with section 28(2) of the Act?
- (C) Was the disclosure of personal information by the Supervisor to the WCB in accordance with section 32 of the Act?
- (D) Did the Psychologist disclose personal information to the Supervisor? If yes,
- (E) Was this disclosure by the Psychologist to the Supervisor in accordance with section 32 of the Act?
- (F) Was the disclosure of personal information by the Psychologist to the WCB in accordance with section 32 of the Act?
- (G) Were reasonable measures in place to prevent unauthorized access to personal information in accordance with section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91?

## 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,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual...
- (g) the views or opinions of another individual about the individual,
- (h) the individual's name where it appears with other personal information relating to the individual...

The complainant provided us with a number of documents containing his personal information. These documents included two WCB memoranda to file, one containing the complainant's medical information, and the other containing the Supervisor's opinion of the complainant, as well as other information relating to the complainant. The documents also included telephone notes made by the Supervisor with details about the complainant's contact with the Psychologist, and two internal memoranda containing information related to the complainant's WCB claim.

It is our view that the information contained in these documents met the requirements in paragraphs (b), (g) and (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 the collection of personal information by the Supervisor in accordance with section 28(2) of the Act?

Section 28(2) states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity.** (emphasis added)

The complainant submitted that the Supervisor did not have the authority to collect his personal information. The complainant provided copies of telephone notes and memoranda. One memorandum indicated that the Supervisor had conducted an investigation relating to the complainant's WCB claim in which he had spoken to the police on the scene of the ambulance

call and to detectives investigating the scene, and to "others who have spoken to [the complainant] concerning his experience ...".

The Ambulance Service submitted that the Supervisor had the authority to collect information about the complainant's claim for WCB benefits, in order to satisfy the WCB and to provide it with comprehensive information. According to the Ambulance Service, any time a WCB claim is under dispute, the Supervisor has an obligation to collect appropriate information to forward to the WCB in accordance with its Personnel Corporate Workers' Compensation Manual (the Manual) which includes a section on Accident and Reporting. The Ambulance Service submitted that since the Supervisor had a duty to provide the WCB with appropriate information about the claim, the Supervisor's collection of personal information was necessary to the proper administration of the lawfully authorized activity of processing the WCB claim.

The complainant subsequently provided us with documentation indicating that the Ambulance Service has a Health and Safety Unit (the Unit) which includes a Workers' Compensation and Rehabilitation division. This division is responsible for dealing with employee occupational injury and illness which involves: "The administration of WCB accident claims; Signing all compensation forms ensuring proper accuracy and completion; Reviewing all compensation claims ensuring compliance as required by the Workers' Compensation Act including the submission of required reports and information".

We examined both the Manual and the information submitted by the complainant. In our view, the processing of an employee's WCB claim is a lawfully authorized activity. As part of this process, the Ambulance Service had an obligation to ensure that the WCB had all the necessary information with respect to the processing of the claim. It was necessary, therefore, for the Supervisor to collect the complainant's personal information, relevant to the processing of the claim, for the purpose of providing the information to the Unit. The Unit was then responsible for forwarding it to the WCB on behalf of the employer. In our view the Supervisor's collection of the complainant's personal information, relevant to the processing of the WCB claim, was necessary for the proper administration of a lawfully authorized activity.

**Conclusion:** The collection of personal information was in accordance with section 28(2) of the Act.

**Issue C:** Was the disclosure of personal information by the Supervisor to the WCB in accordance with section 32 of the Act?

Section 32(e) of the Act states:

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

(e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;

One of the WCB memos to file which the complainant had provided to us, outlined a telephone conversation between a WCB employee and the Supervisor. The memorandum detailed the Supervisor's opinion of the cause of the critical incident stress and his views as to the

complainant's ability to deal with the matter, as well as his work relationship with the complainant.

The Ambulance Service advised that it relied upon section 32(e) of the Act for this disclosure and referred us to section 133(1) of the Workers' Compensation Act (the WCA). This section states in part that an employer shall: "in any case furnish such further details and particulars respecting any accident or claim to compensation as the Board may require." The Ambulance Service submitted that the Supervisor's disclosure was to provide further details and particulars to the WCB. This was especially important since the claim was under dispute -- the Supervisor had an obligation to forward appropriate information to the WCB.

The complainant stated that the Supervisor should not have disclosed his personal information directly to the WCB, but rather, to the Unit which would then have contacted the WCB. In response to this, the Ambulance Service submitted that both the Unit and the Supervisor share the responsibility of ensuring that the WCB is informed of all the facts relevant to a claim. The Ambulance Service stated that, in communicating directly with the WCB, the Supervisor fulfilled his responsibility of providing the relevant facts to the WCB, in a timely manner. Further, the existence of the Unit was not intended to, nor relieves the Supervisor of the responsibilities outlined in the Manual or the Corporate Health and Safety Manual, the WCA, or the Occupational Health and Safety Act. The Ambulance Service stated that while the Unit does have the responsibility for day-to-day claims management and for communicating with the WCB, this does not override the Supervisor's responsibilities for claims management which include keeping the Unit informed and communicating with the WCB.

In our view, section 133(1) of the WCA requires an employer to provide the WCB with any information respecting a claim which the WCB may require. Since it is the responsibility of the Unit to administer WCB accident claims, the Unit would be acting as the employer. As such, any disclosure of personal information by the Unit to the WCB would be in accordance with section 133(1) of the WCA and thus, would be in accordance with section 32(e) of the Act. However, in this case, the Supervisor disclosed personal information to the WCB directly and not to the Unit, which was responsible for communicating with the WCB and administering the complainant's claim. The Ambulance Service has submitted that the Supervisor is equally responsible for the administration of WCB claims which includes communicating with the WCB directly. After carefully reviewing all of the information provided by the Ambulance Service in this regard, it is our view that the information does not demonstrate that the Supervisor was equally responsible for the administration of WCB claims and direct communications with the WCB. There appears to be no written policy available to all employees which clearly states that both share equal responsibility.

Further, on one occasion where the Supervisor communicated information to the Unit, his memorandum stated, "I would welcome [the complainant's] Adjudicator to telephone me or meet with me to discuss this further or answer any questions she/he may have." In our view, this demonstrates that the Supervisor was aware of the Unit's role and responsibility to communicate with the WCB regarding the complainant's claim.

Therefore, we remain of the view that the Unit was responsible for administering the WCB claim and communicating with the WCB. Since the Unit was responsible for acting on behalf of the employer, the disclosure of the personal information by the Supervisor to the WCB was not

made in accordance with section 133(1) of the WCA. Therefore, the disclosure was not in accordance with section 32(e) of the Act.

We have examined the other provisions of section 32 which permit disclosure and have determined that none were applicable to the disclosure made by the Supervisor to the WCB.

**Conclusion:** The disclosure by the Supervisor to the WCB of the complainant's personal information was not in accordance with section 32 of the Act.

**Issue D:** Did the Psychologist disclose personal information to the Supervisor?

According to the complainant, the Psychologist disclosed his personal information to the Supervisor on at least two occasions. As evidence of these disclosures, he provided us with the following:

Disclosure 1: A WCB worker's file note stating that the Supervisor had advised her that "It was indicated by [the Psychologist] that the worker's problems might have been triggered by something else concerning his personal life."

The complainant also referred to the Supervisor's internal memorandum wherein he indicated that he had conducted an investigation relating to the complainant's WCB claim, during which he had contacted "others who have spoken to [the complainant] concerning his experience and I am not satisfied that [the complainant] has experienced critical incident stress." The complainant informed us that he had spoken to no one other than the Psychologist about the incident. The complainant questioned how the Supervisor could have made a finding of this nature without any input from the Psychologist. In his comments on the draft report, the complainant provided further information to support his view that there had been a disclosure.

Disclosure 2: A copy of a telephone note made by the Supervisor during a conversation with the Psychologist that stated: "Spoke to [the Psychologist] - said he'd spoken to [the complainant] - didn't want to meet him - seeing his own Dr. - went on for about an hour re how DAS had errored in ensure contact = him".

The Ambulance Service has advised that the Psychologist maintained that he had not disclosed any personal information to the Supervisor.

We have examined the documents provided by the complainant, including the information provided in response to the draft report. With regard to the first disclosure, it remains our view that the documents do not establish conclusively that the Psychologist disclosed the specific personal information about the complainant's critical incident stress to the Supervisor. Therefore, we remain unable to conclude that the first disclosure had occurred.

However, with regard to the second disclosure, it is our view that the telephone note did establish that the Psychologist disclosed to the Supervisor, the fact that he had made contact with the complainant and the subject matter of that contact regarding, for example, the fact that the complainant was seeing his own doctor. Therefore, in our view, we can conclude that the second disclosure did occur.

**Conclusion:** The Psychologist disclosed the complainant's personal information to the Supervisor.

**Issue E:** Was this disclosure by the Psychologist to the Supervisor in accordance with section 32 of the Act?

The Ambulance Service stated that it relied upon section 32(d) of the Act for the disclosure.

Section 32(d) of the Act states:

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

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

The Ambulance Service stated that the Supervisor needed the complainant's personal information in the performance of his duties. The Ambulance Service submitted that the Supervisor was required to both ensure the well-being of the employee by ensuring that the Psychologist and the complainant had made contact, and to provide the WCB with comprehensive information regarding the WCB claim. In its comments on the draft report, the Ambulance Service submitted that a significant factor in the WCB's decision to grant or deny a claim is whether or not an individual has sought medical attention, or if there is a delay in seeking medical attention. This is also relevant to a supervisor's decision to question a WCB claim or to appeal a decision. Therefore, based upon this information, the Ambulance Service submitted that the Supervisor needed to know of any contact between the Psychologist and the complainant as part of his responsibility for investigating the WCB claim and ensuring the well-being of the employee. Accordingly, the disclosure by the Psychologist to the Supervisor was a disclosure to an employee who needed the information in the performance of his duties, and it was necessary and proper in the discharge of the institution's functions.

It is our view that the investigation and processing of employees' WCB claims are administrative functions of the institution. The Ambulance Service submitted that the personal information in question was relevant to a supervisor's investigation of a WCB claim since it might affect his decision to question a claim or to appeal a decision. In this case, the Supervisor placed a question on the complainant's claim with the Unit before he called the Psychologist regarding any contact he had had with the complainant. Thus, in this case, it is our view that the information from the Psychologist was not necessary for the Supervisor to place a question on the complainant's claim with the Unit. In addition, it is our view that the disclosure by the Psychologist of his contact with the complainant, and any details relating to that contact, was not necessary and proper for the purpose of processing the WCB claim. Therefore, it is our view that the disclosure was not in accordance with section 32(d) of the Act.

In our draft report we stated that we had examined the application of section 32(c) of the Act to the disclosure. Section 32(c) permits the disclosure of personal information "for the purpose for which it was obtained or compiled or for a consistent purpose". We stated that in our view, one

of the purposes for the complainant's personal information being obtained by the Psychologist during the course of assisting him, would have reasonably been to ensure the well-being of the complainant as an employee. It was thus our view that the Psychologist's disclosure of the fact that he and the complainant had made contact was, in part, to reassure the Supervisor that contact had been made with the employee and that he was in fact receiving assistance from the Psychologist. The Supervisor, as the complainant's supervisory officer, was responsible for the well-being of the employee, in the workplace. Therefore, it was our view that the disclosure to the Supervisor by the Psychologist of his contact with the complainant (but not the details of the contact) would have been in accordance with section 32(c) of the Act.

Since then, however, documentation provided by the complainant indicates that it is not the Supervisor but the Unit that co-ordinates all matters pertaining to Health and Safety in the workplace; specifically, the Workers' Compensation and Rehabilitation division has the responsibility for dealing with employee occupational injury and illness.

In addition, the complainant provided information regarding the confidentiality requirements for the Ambulance Service's Critical Incident Stress Debriefing Team (the Team) of which the Psychologist is a member. This information indicates that emphasis is given to staff being "entitled to strict and complete confidentiality including anonymity of person and events..." in most situations where a member of the Team has been contacted. The complainant also provided a copy of a statement later made by the Psychologist regarding his contact with the complainant, which reads in part, "At our first meeting I did inform him that he need not disclose the fact that he had met with me. No one needed to know that we had even met. I indicated the Department fully respects the concept of client confidentiality."

The Ambulance Service provided information from the Corporate Health and Safety Manual outlining that a competent supervisor must "take every precaution reasonable in the circumstances for the protection of a worker", and a policy which states: "all levels of management have, as a primary responsibility, the safety and personal well-being of employees directly below them". The Ambulance Service maintained that all supervisors have a responsibility to ensure the personal well-being of their employees, and a responsibility to the public to ensure that employees are able to perform their duties. The Ambulance Service stated that it is not feasible in practice, or justifiable under the WCA or the Occupational Health and Safety Act, for the Unit to coordinate **all** matters pertaining to Health and Safety in the workplace, or to have sole responsibility for these matters with employees.

We have carefully reviewed all of the information provided by both parties. We remain of the view that one of the purposes for the complainant's personal information being obtained by the Psychologist during the course of assisting him would have reasonably been to ensure the well-being of the complainant as an employee. We acknowledge that supervisors do have some responsibility for the health and safety of their employees in addition to the Unit's responsibilities. However, in our view, when the Ambulance Service established its Critical Incident Stress Debriefing Team, employee health and safety would have been a factor considered in its development. The policy of confidentiality of contact with the Team would have been drafted with the well-being of the employees who used the services of the Team in mind. Thus in our view, the Team has the primary responsibility for ensuring the well-being of the employee and as part of that responsibility, Team members are required to abide by the



Ambulance Service's confidentiality policy. Thus we regard the disclosure by the Psychologist of his contact with the complainant, which was contrary to this policy, not to have been for the well-being of the employee.

Given the Ambulance Service's policy of strict confidentiality regarding staff contact with the Team, it is our view that it was inappropriate for the Supervisor to have been informed by the Psychologist that contact had been made between the Psychologist and the complainant. Since it is our view that the Psychologist's disclosure of his contact with the complainant to the Supervisor was not for the purpose of ensuring the well-being of the complainant as an employee, we do not consider the Psychologist's disclosure to have been made for one of the purposes for which he had obtained the information. Therefore, it was not in accordance with section 32(c) of the Act. It is also our view that no other provisions in section 32 applied to this disclosure.

**Conclusion:** The Psychologist's disclosure to the Supervisor was not in accordance with section 32 of the Act.

**Issue F:** Was the disclosure of personal information by the Psychologist to the WCB in accordance with section 32 of the Act?

The complainant provided a statement from his WCB claim file which showed that the Psychologist had been contacted by the WCB to obtain a diagnosis and authorization for the complainant to be off work. The Psychologist told the WCB that he had met with the complainant and would be seeing him on a regular basis, but would not comment on a diagnosis or authorization for the complainant to be off work.

The Ambulance Service has stated that if there had in fact been a disclosure, it would have been in accordance with section 32(e) of the Act. Section 32(e) states that an institution shall not disclose personal information in its custody or under its control except for the purpose of complying with an Act of the Legislature or an Act of Parliament. The Ambulance Service had relied upon section 133(1) of the WCA, for the same reasons as outlined in Issue C.

It is our view that the WCA requires an employer to provide the WCB with any information respecting a claim which the WCB may require. The Psychologist, who was an employee of the Ambulance Service, was contacted by the WCB for further details and particulars respecting the complainant's claim. Since the WCA requires an employer to provide the WCB with any information it may require, it is our view that the Psychologist disclosed the complainant's personal information in accordance with section 32(e) of the Act.

**Conclusion:** The Psychologist's disclosure to the WCB was in accordance with section 32(e) of the Act.

**Issue G:** Were reasonable measures in place to prevent unauthorized access to personal information in accordance with section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91?

Section 3(1) of Regulation 823, as amended by Regulation 395/91, states:

Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.

It is our understanding that during the day, supervisors may record various daily incidents in notebooks or logs. According to the complainant, the supervisors' logs are located in the management office and are accessible by all management staff. In his submissions to our draft, the complainant maintained that this also applies to supervisors' telephone notes. The complainant advised us that his personal information relating to the WCB claim had been "leaked" to Ambulance Service staff through the Supervisor's telephone notes. He also submitted that another staff member had read the Supervisor's telephone notes containing his personal information, and had informed him of the contents of these notes.

The Ambulance Service has advised that the logs are kept locked in wooden boxes located in the basement of the area office. When supervisors are on the road, these logs are kept with them at all times. At the end of the day when supervisors return to the office, the logs are returned to the boxes; supervisors have a key to their own boxes. The Area Manager also has a key to each individual box but uses the key only in emergencies when the supervisor is away from the office or on vacation. The Ambulance Service also advised that supervisors do not routinely keep telephone notes separately from the logs. In this case, the Supervisor felt that separate telephone notes were necessary. The Ambulance Service advised that supervisors' telephone notes are kept with the logs in the locked boxes, or are locked in the supervisors' offices during the day. The Ambulance Service has thus maintained that any telephone notes made by supervisors are kept in the same secure fashion as the logs, and that reasonable measures are in place to prevent unauthorized access to them.

The complainant submitted that there is no policy regarding the security of telephone notes. He stated that he learned of the Supervisor's contact with the WCB from another staff member who had gained access to the Supervisor's telephone notes while the notes were at the Supervisor's desk. As evidence, the complainant provided a memorandum from his WCB claim file which notes that he contacted the WCB Adjudicator to ask about the Supervisor's contact with the WCB. The complainant informed the WCB Adjudicator that he had learned about the Supervisor's contact with the WCB from one of his co-workers. The complainant submitted that his co-worker could only have accessed this particular information through the telephone notes. Based upon this, the complainant submitted that reasonable measures were not in place to prevent unauthorized access to the telephone notes.

We have carefully reviewed the information provided by the complainant. It is our view that the documents do not establish conclusively that there was unauthorized access to the Supervisor's telephone notes. Further, while it appears in this instance that Ambulance Service staff may have become aware of the incident relating to the complainant's WCB claim, we were unable to determine conclusively that this had resulted from unauthorized access to the log books and telephone notes.

We have reviewed the procedures for the log books and telephone notes and it is our view that reasonable measures are in place to prevent unauthorized access while the logs and telephone

notes are in the area office. However, section 3(1) of the Regulation requires that these measures be "defined" and "documented".

In a previous investigation which also involved supervisors' logs (in part), we found that the Ambulance Service's Privacy Guidelines did not address the matter of supervisors' logs and the measures in place to prevent their unauthorized access. In this investigation, we noted that there were there are no guidelines as of yet, specifically addressing the matter of logs and telephone notes, and the measures in place to prevent their unauthorized access.

**Conclusion:** Reasonable measures were in place to prevent unauthorized access to the personal information contained in the supervisors' logs and the telephone notes. However, these measures have not been "defined" or "documented", as required by section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91.

## **OTHER MATTERS**

The complainant also raised a concern that the personal information disclosed by the Supervisor to the WCB was incorrect. We would like to refer the complainant to section 36(2) of the Act which sets out the complainant's right of correction to his personal information (see Appendix A for full text).

## **SUMMARY OF CONCLUSIONS**

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The collection of personal information was in accordance with section 28(2) of the Act.
- The disclosure by the Supervisor to the WCB of the complainant's personal information was not in accordance with section 32 of the Act.
- The Psychologist disclosed the complainant's personal information to the Supervisor.
- The Psychologist's disclosure to the Supervisor was not in accordance with section 32 of the Act.
- The Psychologist's disclosure to the WCB was in accordance with section 32(e) of the Act.
- Reasonable measures were in place to prevent unauthorized access to the personal information contained in the supervisors' logs and telephone notes. However, these measures have not been "defined" or "documented", as required by section 3(1) of Regulation 823 under the Act, as amended by Regulation 395/91.

## RECOMMENDATIONS

We recommend that:

1. The Ambulance Service take steps to ensure that all staff are aware of the limited purposes for which the disclosure of personal information is permitted under section 32 of the Act.
2. If it is the Ambulance Service's intent that supervisors should have equal responsibility as the Health and Safety Unit for the administration of WCB claims, including communicating directly with the WCB, then the Ambulance Service should clearly set this out in a written policy, and ensure that all staff are made aware of it.
3. The Ambulance Service's Privacy Guidelines should include information regarding the measures in place for the safe storage of supervisors' logs and telephone notes, and access to them.

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

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

September 30, 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.