



**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 I93-032P**

### **HEALTH DISCIPLINES BOARD**

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# INTRODUCTION

## Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Health Disciplines Board (the Board). The complainant had complained about the conduct of ten doctors at a hospital to the College of Physicians and Surgeons of Ontario (the College). The College's complaints committee made a disposition of her complaint against the doctors, but she was not satisfied with the College's decision, so she requested that the Board review it.

The Board is established under section 6(1) of the Health Disciplines Act. When a request is made for a review, the Board's role is to review the College's decision. The Board may confirm the decision of the complaints committee, make recommendations to the complaints committee, or require the complaints committee to take action or proceedings.

When the complainant wrote to the Board, asking for the College's decision to be reviewed, she also made the following request: "I would like to have full disclosure of all data considered by the College and also information from the Investigator to justify their conclusion."

When the Board receives a request for disclosure from the complainant or the member being complained about, its practice is to ask the other parties to the complaint if they object to the disclosure. In this case, there was no objection from the doctors, provided that they, too, received the same documents as the complainant. Accordingly, the Board released a package of approximately 200 documents to the complainant, as well as to the doctors' agent.

The package included copies of the complainant's correspondence to and from the doctors she had complained about, as well as a letter from the complainant to a Chief of Police, which included information relating to complaints about two of the doctors, information relating to her complaints about police officers, and other information not related to either of these matters. The package also contained a letter from the Police Complaints Commissioner to the College concerning the complaints about the doctors, a letter from the Police Complaints Commissioner to a Deputy Chief of Police advising him that the complaint letter had been forwarded to the College, and excerpts from the complainant's medical records.

The Board's review was held in the form of a meeting. The complainant, the Board members, eight of the doctors complained about, their agent who was representing them, a representative of the College, and the Board's clerical assistant, who took notes for the Board, attended the review.

The complainant noted that each individual at the review appeared to have a file containing copies of the same documents that the Board had provided to her. She was concerned that her personal letters to the doctors had been copied and placed in this file in a way that revealed her name, address, and state of health.

She believed that the disclosure of these documents in the file to the doctors and their agent (i.e. their lawyer) breached her privacy, and that her personal health record might have been subsequently used by the doctors and their agent. The complainant was the first person to leave

the review room, and therefore, was unable to determine what had happened to the copies of the file that the Board had used during the review.

She stated that she had not expected anyone except the Registrar of the Board and herself to attend the review. She believed that "outsiders" had attended the review, and that disclosure to these individuals breached the privacy provisions 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) Did the file contain the complainant's "personal information", as defined in section 2(1) of the Act?

If the answer to the above question is yes,

- (B) Was the complainant's personal information disclosed to the doctors and their agent in accordance with section 42 of the Act?

## **RESULTS OF THE INVESTIGATION**

**Issue A: Did the file contain the complainant's "personal information", as defined in section 2(1) of the Act?**

Section 2(1) of the Act defines "personal information" as recorded information about an identifiable individual, including, but not limited to,

...

- (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,

...

- (d) the address, telephone number, fingerprints or blood type of the individual,

- (e) the personal opinions or views of the individual except where they relate to another individual,

...

- (h) the individual's name where 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 file contained recorded information about the complainant, including: her name and address, information relating to her medical history, information about her concerning her complaints relating to the doctors and the police, her personal opinions or views, and other information about her not related to the above complaints. In our view, this information meets the requirements of paragraphs (b), (d), (e), and (h) of the definition of personal information in section 2(1) of the Act.

**Conclusion:** The file contained the complainant's personal information, as defined in section 2(1) of the Act.

**Issue B: Was the complainant's personal information disclosed to the doctors and their agent in accordance with section 42 of the Act?**

Section 42 of the Act sets out the rules for disclosure of personal information other than to the individual to whom the information relates. This section provides that an institution shall not disclose personal information in its custody or under its control, except in the circumstances listed in sections 42(a) through (n). We have examined the exceptions listed in section 42, and determined that section 42(c) applies to the disclosure of personal information in the circumstances of this case. This section 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;

To determine whether the disclosure to the doctors and their agent had been made in accordance with section 42(c) of the Act, we considered the circumstances under which the complainant's personal information had originally been obtained by the Board.

We determined that after the College receives notice that a review has been requested, it is required, under section 8(2) of the Health Disciplines Act, to transmit to the Board "a record of the investigation and all such documents and things upon which the decision was based". The record is required for the purpose of conducting the review.

In practice, the College transmits its complete file to the Board. Therefore, in the circumstances of this case, in order to conduct the review, the Board received the College's complete file, which included all the complainant's correspondence to and from the doctors, the complainant's medical records, and the letters that had been forwarded to the College by the Police Complaints Commissioner.

The Board submitted that:

The Board's decision to make disclosure was based on the principles derived from relevant jurisprudence and principles of fairness and natural justice. Disclosure could not have been afforded to the member of the public [the complainant] without affording the same advantage to the physicians complained against.

As we understand it, the Board's purpose, therefore, for disclosing the complainant's personal information to the doctors was to allow each of the parties to the complaint equal access to the information from the College, in order that each would have a fair opportunity to present his or her case. Section 8(2) of the Health Disciplines Act states in part:

... and the Board shall review the decision [of the College] after giving the complainant an opportunity to state the complaint and the member an opportunity to state an answer thereto, either personally, by agent or in writing.

As previously mentioned, the Board obtained the complainant's personal information from the College to conduct a review of the College's decision. As part of that process, the Board is required to allow the parties the opportunity to state their cases. To facilitate that process, the Board disclosed the complainant's personal information to the doctors and their agent. Therefore, in our view, the complainant's personal information was disclosed for the purpose for which it was obtained, which was for the conduct of the review. Accordingly, we find that the disclosure of the complainant's personal information was made in accordance with section 42(c) of the Act, for the purpose for which it was obtained.

**Conclusion:** The complainant's personal information was disclosed to the doctors and their agent in accordance with section 42(c) of the Act.

### **Other Matters**

We wish to draw attention to the following:

#### **Request for Disclosure**

In the circumstances of this case, the complainant had made a request for full disclosure of "**all data considered by the College ...**". In our view, some of the information disclosed (e.g. portions of the complainant's letter relating to her complaints about the police, or her being evicted from her home) may not have been relevant to the issue that had been considered by the College. However, these documents formed part of the College's record.

#### **"Outsiders" at the Review**

The complainant stated to us that she felt that the Board violated her privacy by inviting outsiders to the review and disclosing her personal information to all of them. The complainant's view was that the disclosure of her personal information to the doctors and "outsiders" breached her privacy.

The Board stated that it forwards to all complainants requesting a review, a copy of an information brochure, which is a publication of the Board. The Board went on to state that due to the complainant's numerous requests for reviews she likely was in receipt of a number of copies of this brochure. We reviewed a copy of this pamphlet, and found that it included a section entitled "What Happens at a Review". This section makes reference to the fact that most of the Board's reviews are held in closed session, that the Board members would be present to ask questions of the complainant and the members being complained about, or their agent, and that a representative of the College might attend to answer questions.

According to the Board, the complainant, the Board members, eight of the doctors complained about, their agent, a representative of the College, and the Board's clerical assistant, who took notes for the Board, attended the review. The Board explained to us that the review was held in-camera. Therefore, attendance at the review was restricted to the above individuals; members of the public were not allowed to attend.

Although the review might not have been conducted in a manner that the complainant would have preferred or expected, despite the information she had been given in the brochure or in conversation prior to the review, we found no evidence in the complainant's file, or in the representations of the Board to support the complainant's view that any individuals who were not in some way a party to the complaint about the doctors or a party to the review process attended.

### **Information Brochure**

Although the above-mentioned brochure provides helpful information to complainants, it does not address the consequences of making a request for disclosure to the Board (i.e. that any information disclosed to the requester would also be disclosed to the members being complained about, barring a medical or other good reason to oppose the disclosure). The Board explained that such information would have likely been shared with the complainant by telephone, in the course of any enquiries she had made. However, we suggest that to prevent future misunderstandings, the Board consider incorporating information about disclosure into its brochure.

### **Subsequent Use of the File**

The complainant was unsure about what had happened to the copies of the file that the Board had used during the review. The Board explained that it keeps only its primary file. The copies that the Board had used during the review were subsequently shredded, as were the notes taken by the Board's clerical assistant. We found no evidence in the Board's file or in its representations to support the view that the remaining copies of the file had been removed from the room, other than for storage or to be shredded.

The Board was not certain whether the doctors and their agent had kept their copies. However, in our view, since the Board had allowed disclosure of the file to the doctors and their agent, once disclosure had taken place, the records in question would no longer be in the custody or under the control of the Board, and would not fall under the jurisdiction of the Act.

## SUMMARY OF CONCLUSIONS

- The file contained the complainant's personal information, as defined in section 2(1) of the Act.
- The complainant's personal information was disclosed to the doctors and their agent in accordance with section 42(c) of the Act.

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

December 24, 1993  
\_\_\_\_\_  
Date