



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

INVESTIGATION REPORT

INVESTIGATION I94-005M

A POLICE SERVICES BOARD



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

INTRODUCTION

Background of the Complaint

A police chief (the complainant) wrote that his employer, a named police services board (the Board), had disclosed his personal information contrary to the provisions of the Municipal Freedom of Information and Protection of Privacy Act (the Act). He complained that the Board had faxed his September 1993 performance evaluation (the evaluation) to its solicitor. Subsequently, the Board's solicitor sent the complainant's lawyer a copy of this evaluation. The lawyer then sent the complainant a copy.

The complainant stated that the Board had also wrongfully disclosed the evaluation to clerical staff who were involved in faxing/sending the evaluation to the solicitor, to the lawyer, and to himself.

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 the disclosure of the personal information in accordance with section 32 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,

...

- (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;

We have reviewed a copy of the evaluation in question. The evaluation contained the complainant's name together with the views and opinions of the Board relating to his job performance such as his management skills. It also included statements attributed to him.

In our view, the information contained in the evaluation satisfied the requirements of the definition of personal information in paragraphs (g), and (h) of 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 disclosure of the "personal information" in accordance with section 32 of the Act?

Under the Act, an institution shall not disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32 (see Appendix A for full text).

The Board's Disclosure to its Solicitor

The Board stated that it had relied on sections 31(b), 32(c), and 32(d) of the Act for this disclosure. In our view, section 32(c) was applicable. It 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;

...

Section 33 of the Act further provides that:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure.

However, where personal information has been collected **indirectly** from an individual (as in this case), a consistent purpose would be one that was "reasonable compatible" with the purpose for which the personal information had been obtained or compiled.

The Board stated that it had compiled the evaluation in question, and other personnel and performance reviews about the complainant to fulfil its mandate, as set out in section 31 of the

Police Services Act (the PSA). In particular, the Board had relied on sections 31(c), (d), and (e) of the PSA which state:

A board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall,

...

- (c) establish policies for the effective management of the police force;
- (d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;
- (e) direct the chief of police and monitor his or her performance;

...

The Board stated that it had retained its solicitor to advise it in connection with the administration of police services. In order to fully instruct its solicitor so that he could provide the Board with advice, it was necessary for the Board to give its solicitor information regarding the operation of the police force and the complainant who was its chief of police.

The Board further advised that on August 17, 1993, the Board had passed the following resolution:

Be it resolved that Mr. [name of solicitor], the solicitor for the Police Services Board be authorized to contact the Solicitor General to request that the Ontario Police Commission hold a hearing to enquire into the performance of [name of complainant] as Chief of Police.

On August 19, 1993, the solicitor wrote such a letter to the Ministry of the Solicitor General and Correctional Services (the Ministry) outlining the matters that the Board would be raising concerning the complainant's performance. In order for the solicitor to do so, it was necessary for the Board to disclose the complainant's personal information to him.

The Board originally compiled the complainant's personal information in the evaluation in order to fulfil its mandate under section 31 of the PSA. In our view, the Board's subsequent disclosure of the complainant's personal information to its solicitor so that he could advise and assist the Board in fulfilling its mandate was for a purpose which was "reasonably compatible" with the purpose for which the personal information had been compiled. Therefore, in our view, the Board's disclosure of the complainant's personal information in the evaluation was for a consistent purpose and was, therefore, in accordance with section 32(c) of the Act.

The Board's Disclosure to a Clerical staff member

The evaluation had been signed by three members of the Board (and the complainant).

The complainant believed that the evaluation had been disclosed to a clerical employee who in turn had faxed it to the Board's solicitor. However, the Board's solicitor stated that one of the members who had signed the evaluation had faxed it to him. We found no evidence that the Board had disclosed the evaluation to any staff members.

The Board's Solicitor's Disclosure to the Complainant's Lawyer

The complainant stated that the evaluation had also been disclosed to the solicitor's secretary, the complainant's own lawyer, and his lawyer's secretary who in turn had sent him a copy. We have not examined the actions of the complainant's lawyer or his secretary since neither had been retained or were employed by the Board.

With respect to the Board's solicitor's disclosure to the complainant's lawyer, the Board advised that the complainant's lawyer had contacted the solicitor and had informed him that he was representing the complainant. The Board's solicitor (through his secretary) had then sent the complainant's lawyer a copy of the evaluation and the Board's letter to the Ministry as part of the full disclosure of the Board's concerns with respect to the complainant's performance.

As previously stated, the Board had complied the complainant's personal information in the evaluation to fulfil its mandate under the PSA. In our view, the disclosure by the Board's solicitor to the complainant's lawyer was for a purpose that was reasonably compatible with the purpose for which the personal information had been compiled. This disclosure was, therefore, for a consistent purpose, in accordance with section 32(c) of the Act.

Conclusion: The Board's disclosure of the complainant's personal information to its solicitor was in accordance with section 32(c) of the Act.

We found no evidence that the Board had disclosed the evaluation to any staff members.

The Board's solicitor's disclosure to the complainant's lawyer was in accordance with section 32(c) of the Act.

Other Matters

During the course of this investigation, the following matter was identified which should be brought to the institution's attention.

While this complaint did not concern the improper disclosure of personal information by facsimile, we noticed that the Board had used a facsimile machine to transmit sensitive personal information. We reminded the Board of our faxing guidelines and enclosed, with our draft report, a copy of the following documents: "Guidelines on Facsimile Transmission Security, June 1989" and "Update on 1989 Guidelines on Facsimile Transmission Security, June 1990".

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Board's disclosure of the complainant's personal information to its solicitor was in accordance with section 32(c) of the Act.
- We found no evidence that the Board had disclosed the evaluation to any staff members.
- The Board's solicitor's disclosure to the complainant's lawyer was in accordance with section 32(c) of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

May 17, 1994
Date

APPENDIX A

32. An institution shall not disclose personal information in its custody or under its control except,
- (a) in accordance with Part I;
 - (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
 - (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
 - (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;
 - (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 treaty;
 - (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
 - (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
 - (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
 - (j) to the Minister
 - (k) to the Information and Privacy Commissioner;
 - (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.