



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

INVESTIGATION REPORT

INVESTIGATION I93-079M

A MUNICIPALITY



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

This investigation was initiated as a result of a complaint concerning the Community Services Department of a Municipality (the Municipality).

The complainant, a day care operator, wished to enter into a purchase of service agreement with the Municipality. He was required to provide certain information to the Municipality. The complainant was concerned that the collection of this information was contrary to Municipal Freedom of Information and Protection of Privacy Act (the Act).

Collection 1:

The complainant was required to fill out a "Budget Submission For Purchase of Service Agreement" package. The prescribed forms dictated that the complainant provide information relating to himself and to all staff members of his day care operation and their projected salaries. The complainant was concerned with the collection of this information. One of the forms in the package categorized staff by position. The complainant maintained that since he was the only person who was employed as a supervisor, he was clearly identifiable.

Collection 2:

The complainant wished to employ an individual at his day care centre who did not have the requisite qualifications under the Day Nurseries Act. Accordingly, the complainant made an application to the Ministry of Community and Social Services, for a provincial provisionally trained exemption under the Day Nurseries Act, on behalf of the individual.

Day care operators involved in purchase of service agreements with the Municipality must, according to the Municipality's Operating Criteria, submit an application for a **municipal** provisionally trained exemption as well. The Municipality required several supplementary documents to be filed with the application which would be taken into consideration in determining whether to approve the application. The complainant was concerned that the collection of some of the supplementary documentation was contrary to 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) Was the Municipality's collection of the personal information in accordance with section 28(2) 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,

- (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,
- (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;

Collection 1:

The Budget Submission For Purchase of Service Agreement contained staff members' names, positions held; actual annual salary paid to the position the previous year without a grant contribution; and the annual salary estimated for the position without a grant contribution, for the applicable year.

In our view, this information met the requirements of paragraphs (b) and (h) of the definition of "personal information", in section 2(1) of the Act.

Collection 2:

The application for a provisionally trained exemption required the submission of the provincial approval letter, the advertisement of vacancy or receipts from advertisements, the individual's diploma, a transcript of courses, a letter from an educational institution confirming outstanding courses and/or practicums, a letter of intent from a staff member, and A.E.C.E.O. Exam confirmation/results.

Of the required information, the complainant provided the provincial approval letter, the individual's diploma, and a transcript of the individual's courses. In our view, this information met the requirements of paragraphs (b) 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 Municipality's collection of the personal information 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 Municipality stated that, at its discretion, it may provide for the establishment of day nurseries. It may also enter into agreements with day care operators for nursery services, and may make expenditures as are necessary for those services. The Municipality indicated that these activities are authorized by section 3 of the Day Nurseries Act.

Section 3 of the Day Nurseries Act states:

- (1) The council of a municipality may, subject to this Act and the regulations, by by-law provide for the establishment of day nurseries.
- (2) The council of a municipality may pass by-laws granting aid to day nurseries.
- (3) The council of a municipality may subject to this Act and the regulations, enter into an agreement with the operator of a day nursery for the furnishing of day nursery services for such children as is agreed upon, and the municipality may make expenditures as are necessary for the purpose.

In our view, the Municipality's establishment of day nurseries, the purchase of nursery services from day nursery operators and the making of expenditures necessary for this purpose, are lawfully authorized activities.

The Municipality advised that in order to administer day nurseries and the purchase of service agreements, as well as determine the necessary expenditures for this purpose, an operating criteria was established. This criteria sets out municipal standards in accordance with the Day Nurseries Act and its regulations.

Collection 1:

The Municipality advised that it must determine the expenditures that are necessary for the purchase of services from day nursery operators who are a party to a purchase of service agreement. In order to do this, the day nursery operators must file a detailed budget submission. The budget submission package requires the day nursery operator to include the names of **all** day nursery staff, their positions held, and their projected salaries.

The Municipality stated that it has a responsibility to verify that any funds provided are used for the purposes intended. The Municipality stated that a significant percentage of the funding given in a purchase for service agreement is determined by salary expenditures. In accordance with the operating criteria, the total salaries for specified positions can not exceed salaries paid to the municipally operated day nurseries' staff. To ensure the claimed costs have been incurred and the identified individuals have received the appropriate compensation, employee T4 slips are compared with the budget submission.

The Municipality maintained that, therefore, the identities of all day nursery staff employed at the day care operation, the positions they held, and their projected salaries were needed to verify that the specified staff with the required qualifications or approvals held the positions and earned the projected salary as indicated in the budget submission. This would include the information about the complainant since he was the supervisor.

In our view, the Municipality had a responsibility to verify the expenditures made for its purchase of day nursery services, and that the funds were used for the purposes intended. The Municipality was also required to verify that the specified staff with the necessary qualifications or approvals were functioning in the noted positions. In order to do so, it was necessary for the Municipality to know which specifically named individuals were projected to earn those salary dollars and what their qualifications were to hold those positions. The Municipality needed to verify that the identified individuals did in fact earn the projected salaries and that these salaries did not exceed salaries paid to the municipally operated day nurseries' staff in the same positions. Therefore, it is our view that the Municipality's collection of the personal information on the budget submission was necessary for the proper administration of lawfully authorized activities, namely, the purchase of nursery services and the determination of the expenditures necessary for this purpose. Therefore, the Municipality's collection of the personal information was in accordance with section 28(2) of the Act. Given this finding, the complainant's concern that he was identifiable by virtue of being the only supervisor need not be addressed.

Collection 2:

When an individual does not have the requisite qualifications under the Day Nurseries Act to be employed in a day nursery, an application may be brought under sections 59 and 60 of Regulation 262 of the Day Nurseries Act for a provisionally trained exemption. This application must be made by the day nursery operator, on behalf of the individual, because provisionally trained exemptions are "site specific". A provisionally trained exemption allows an individual to function in a specific position where that individual has not fully completed their training.

The Municipality stated that in order to properly administer day care facilities in accordance with the Day Nurseries Act and its regulations, it must be fully satisfied that employees working in a facility in which it is engaged in a purchase of service agreement have the required qualifications or approvals. The Municipality stated that when contracting with day care providers, it shares in the liability of the facility and thus, finds it necessary to verify that an individual qualifies to be provisionally trained according to the Municipality's standards, as set out in its operating criteria.

The Municipality's application for a provisionally trained exemption required the complainant to submit supplementary documentation, as stated under issue A. This documentation was to support the application. Of the required information, the complainant provided the individual's provincial approval letter, diploma, and a transcript of courses.

The Municipality stated that it needed this supporting personal information to assess whether the individual was qualified to hold the position despite not having the requisite qualifications under the Day Nurseries Act.

In our view, the complainant's submission of the supplementary documentation supporting the individual's application for a provisionally trained exemption was necessary for the Municipality to ensure that the individual was qualified to work in the day nursery operation with which the Municipality had a purchase of service agreement. The Municipality needed to be able to satisfy itself that the individual's qualifications met its operating criteria since it ultimately shared in the liability of the facility. Therefore, in our view, the Municipality's collection of this personal information was necessary to the proper administration of a lawfully authorized activity, that being, the provision of day care services under a purchase of service agreement. The Municipality's collection of the personal information was, thus, in accordance with section 28(2) of the Act.

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

The collection of the personal information contained in the supplementary documentation for the provisionally trained exemption application was in accordance with section 28(2) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The collection of the personal information on the budget submission was in accordance with section 28(2) of the Act.
- The collection of the personal information contained in the supplementary documentation for the provisionally trained exemption application was in accordance with section 28(2) of the Act.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

May 17, 1994

Date
