



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

INVESTIGATION REPORT

INVESTIGATION I94-051P

MINISTRY OF HEALTH



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a psychiatric hospital (the Hospital) of the Ministry of Health (the Ministry).

The complainant, an employee of the Ministry, was working under a Memorandum of Agreement between herself and the Ministry to better accommodate her in the workplace, further to the Ontario Public Service's Employment Equity Program. The complainant had a severe shellfish allergy. During the course of adjusting the complainant's working arrangements under the Memorandum of Agreement, the complainant's personal information, including her medical information and employee accommodation requirements, was disclosed to the Director of Medical Services (the Director) at the Hospital.

The complainant was concerned that the disclosure of this information to the Director, without her consent, was not in compliance with 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) Was the Ministry's disclosure of the complainant's personal information to the Director 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) states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (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 information in question consisted of the Memorandum of Agreement dated January 15, 1993, six internal memoranda dated April 25, 1994, June 16, 1994, and June 30, 1994, and two

medical letters from the complainant's doctors dated June 19, 1992 and March 3, 1993. The information contained in these documents included the complainant's name together with her medical information, information about her special employment requirements, and arrangements that had been made for her by the Ministry.

It is our view that this information met the requirements of 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: Was the Ministry's disclosure of the complainant's personal information to the Director in accordance with section 42 of the Act?

Under the Act, personal information cannot be disclosed except in the specific circumstances outlined in section 42. The Ministry stated that it had relied upon sections 42(c) and (d) of the Act for the disclosure. Section 42(c) states that:

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 43 further provides that:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

The Ministry stated that the nursing administration at the Hospital had explored alternative programs and work setups to provide the complainant with a safer and more controlled work environment. Part of these efforts had included consultation with the Director, who was familiar with all the wards, the patient population and the overall operation of the Hospital.

It was the Ministry's view that, considering the Director's position in the Hospital and his knowledge, both administrative and medical, of all wards, programs and dietary regimes, the disclosure of her personal information, as part of the Hospital's efforts to assign her to an allergen-free work environment, might reasonably have been expected by the complainant. The Ministry maintained that the disclosure was, thus, for a consistent purpose in compliance with section 42(c) of the Act.

The complainant informed us that the Hospital had requested that she sign two different authorization letters giving her consent to allow the release of her medical information to the Hospital. The complainant had refused to sign the authorizations because she felt that they were

too broad. The complainant was not aware that the Director had been consulted until after she had received a copy of the Director's memorandum relating to that consultation.

It is our view that since the complainant had not signed the authorization letters and had not been informed that the Director would be consulted as part of the Ministry's arrangements for the employment accommodation, she would not reasonably have expected that her personal information would be disclosed to the Director. Therefore, it is our view that the disclosure was not for a consistent purpose and was not in compliance with section 42(c) of the Act.

The Ministry also relied upon section 42(d) of the Act which states that 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 Ministry advised us that Medical Services staff, including the Director, provide direct and indirect health and safety services to the Hospital and its employees on an informal basis. These services include sporadic adhoc workplace accommodation consultation to the Employee Health nurse, management staff and employees, and sporadic adhoc rudimentary medical consultation/referral to employees, upon request.

The Ministry submitted that the Director's previous experience as an occupational health and safety physician, together with his medical expertise, enabled him to provide valuable input into the determination of appropriate assignments for the complainant. As Medical Director, the Director had to weigh the net effect of the complainant's accommodation agreement on the patients on various wards, with a view to minimizing negative impacts on patients' menus and nutrition. It was for this reason, as well as for his background and knowledge of the Hospital's patient population and ward structure, that the Director's opinion was deemed of value. The Ministry submitted that, therefore, the Director needed the complainant's personal information in the performance of his duties of assisting the Hospital and the complainant in reaching a satisfactory resolution regarding the complainant's employment accommodation requirements.

The complainant informed us that the Director was responsible for providing medical care to the patients of the Hospital, and not the staff. She stated that the Director was not a specialist in her medical condition. The complainant had provided the Hospital with medical letters from her specialist doctors regarding her condition, and she maintained that consultation with the Director was unnecessary. She also advised that it was not within the normal course of the Director's duties to do a consultation of this nature.

It is our view that the provision of a work environment in which an employee's particular accommodation needs are met, further to the Ontario Public Service's Employment Equity Program, is a function of the Hospital. Ensuring the health and safety of its patients is also a function of the Hospital.

In our view, in arranging for the complainant's employment accommodation, the Hospital was required to consider the needs of both its employee and its patients. As Medical Director, the Director had a duty to ensure that the complainant's accommodation needs could be met with maximum possible assurance of the removal of risk to her health and safety on the job, but at the same time ensuring that her needs could be met with minimal health and safety risks to the Hospital's patients. It is, therefore, our view that the Director needed to know details and particulars of the complainant's medical condition relating to her accommodation needs and what those needs were. The disclosure of the complainant's personal information was, therefore, to an officer who required the information in the performance of his duties and the disclosure was necessary and proper in the discharge of the Hospital's functions. Therefore the disclosure was in compliance with section 42(d) of the Act.

Conclusions: The disclosure of the complainant's personal information was in compliance 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 disclosure of the complainant's personal information was in compliance with section 42 of the Act.

RECOMMENDATION

Although we have concluded that the disclosure of the complainant's personal information was in compliance with the Act, we note that the complainant was unaware that the Hospital, in arranging for her employment accommodation needs, had consulted the Director, until she received a copy of his memorandum about the consultation. The complainant was unaware that the Director had a duty of assisting the Hospital by ensuring that her needs could be met while at the same time, ensuring minimal health and safety risks to patients.

Therefore, we recommend that the Ministry take steps to ensure that the Hospital's procedures for processing an application for employment accommodation, or for adjusting existing accommodation arrangements, clearly set out to whom and for what reason(s), the employee's personal 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 recommendation.

Original Signed By: _____
Susan Anthistle
Compliance Review Officer

February 6, 1995
Date
