



**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 I94-009P**

### **MINISTRY OF THE SOLICITOR GENERAL AND CORRECTIONAL SERVICES**

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**November 30, 1994**



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# INTRODUCTION

## Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ontario Civilian Commission on Police Services (the Commission) of the Ministry of the Solicitor General and Correctional Services (the Ministry). The Commission is a quasi-judicial authority which adjudicates appeals, hearings and inquiries under the Police Services Act.

The complainant had written to the Commission indicating that she believed that there should be an investigation into the adequacy, efficiency and competency of a named Police Service and Police Services Board (the Police).

An Advisor from the Commission had responded to the complainant's letter of complaint by stating:

I understand that the Policing Services Division of the Ministry of the Solicitor General is aware of the circumstances in (the named town) and for that reason and that there is no evidence before the Ontario Civilian Commission on Police Services we do not have any jurisdiction to become involved at this stage.

Thus, the Commission did not investigate the complainant's complaint. However, the Commission did investigate a similar complaint concerning the Police which had been filed by another member of the community.

The complainant stated that when the aforementioned Advisor was investigating the similar complaint, he had disclosed to the person who had filed the similar complaint and to another member of the community, the fact that the complainant had also filed a complaint against the Police. She further stated that her identity as a complainant had also been disclosed to the local Police Chief.

The complainant maintained that she had not consented to her name being released in this manner, and was concerned that this disclosure had contravened 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 personal information disclosed to the two individuals in compliance with section 42 of the Act?

- (C) Was the personal information disclosed to the Police Chief in compliance 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) of the Act 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 was the complainant's name and the fact that she had complained about the Police to the Commission. In our view, 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 personal information disclosed to the two individuals in compliance with section 42 of the Act?**

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

The Ministry submitted that during the Commission's investigation into the similar complaint, the Advisor "may have mentioned" the complainant's name to the two individuals. The Ministry added that the Advisor "... cannot say with certainty that he did mention her name, cannot recall when this may have occurred and really cannot recall having done so."

The Ministry further submitted that if the Advisor had in fact disclosed the complainant's name "... it was during the course of a law enforcement investigation and disclosure was for a consistent purpose."

We contacted the two individuals. They stated that the Advisor had contacted them, and had identified the complainant, by name, as having complained about the Police.

We also spoke directly with the Advisor. He stated that although he did not specifically recall disclosing the complainant's name to the two individuals, he probably did. Based on the above, it is our view that in all likelihood, the Advisor disclosed the complainant's personal information to the two individuals.

Although not specifically referred to in its original representations, the Ministry made a number of submissions which were of a nature and kind that would relate to section 42 of the Act. Therefore, in our draft report, we examined whether this disclosure was in compliance with section 42 of the Act; in particular, sections 42(c) and (g) of the Act.

In its response to our draft report, the Ministry stated that it had relied on section 42(c) and not on section 42(g) for the disclosure. The Ministry submitted in part that the disclosure of the complainant's name was for a purpose consistent with law enforcement. We have considered the Ministry's representations and in our view, they appear to relate to both sections 42(c) and 42(g) of the Act; therefore, the application of both sections are discussed in this report.

### **Section 42(c)**

Section 42(c) of the Act states that an institution shall not disclose personal information in its custody or under its control except "for the purpose for which it was obtained or compiled or for a consistent purpose".

The Ministry stated that when the complainant wrote to the Commission about the Police, the Advisor had already been assigned to investigate an identical complaint. The Ministry stated that, at that time, the Commission had received three complaints regarding the Police.

The Ministry added that when the Commission receives a complaint about a police service board, the affected police services board and/or police service is advised of the number of complaints, the nature of the complaints, and the identity of the complainants. The Ministry further stated that since the complainant's complaint was virtually identical to the complaint already being investigated, there had been no need to initiate another investigation.

The Ministry further stated that all relevant aspects must be taken into consideration during the course of an investigation, and that all relevant aspects would include similar allegations. It added that "The discussion of all relevant factors during a law enforcement investigation would be for a consistent purpose, the consistent purpose being the law enforcement investigation."

The Ministry also advised that the complainant had not specifically noted on her complaint that it was made in confidence, and thus she would have reasonably expected the disclosure of her personal information.

It is our view that the Ministry (i.e., the Commission) would have obtained or compiled the complainant's personal information for the purpose of dealing with **her** complaint. Since the Commission informed her that it did not have "any jurisdiction to become involved at this stage", and did not initiate an investigation into her complaint, it cannot be said that the complainant's identity was disclosed to the two individuals for the purpose for which it had been obtained or compiled, namely, dealing with her complaint.

It is also our view that the disclosure was not for a "consistent purpose".

Section 43 of the Act 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.

It is our view that since she had been informed that the Commission had no jurisdiction at the time and since the Commission did not initiate an investigation into her complaint, the complainant's reasonable expectation was likely that her involvement was over.

Further, the complainant's concerns were of the most general nature, unrelated to any specific incident or person. There appeared to be no reason why her identity would have been a relevant factor or be of assistance in the investigation of someone else's complaint. In our view, the complainant could not have reasonably expected that her name would be disclosed to the two other individuals.

It is our view that the Ministry's disclosure of the complainant's personal information to the two individuals was not in compliance with section 42(c) of the Act.

#### **Section 42(g)**

As previously mentioned, the Ministry also submitted that if the Advisor had disclosed the complainant's name, "it was during the course of a law enforcement investigation ...".

Section 42(g) of the Act states that an institution shall not disclose personal information in its custody or under its control except,

where 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;

In order for section 42(g) of the Act to apply, the disclosure must be to an institution or a law enforcement agency in Canada. In this case, the disclosure was to two individuals. Therefore, the Ministry cannot rely on section 42(g) of the Act for the disclosure of the complainant's personal information to the two individuals.

We reviewed the remaining provisions of section 42 and found that none applied to the Ministry's disclosure of the complainant's personal information to the two individuals.

**Conclusion:** The disclosure of the personal information to the two individuals was not in compliance with section 42 of the Act.

**Issue C: Was the personal information disclosed to the Police Chief in compliance with section 42 of the Act?**

As previously mentioned, the Ministry stated that when complaints are received by the Commission, the affected police services board and/or police service is advised of the number of complaints, the nature of the complaints, and the identity of the complainants. The Ministry also stated that the Commission had received three complaints, and that although only one of the complaints was being investigated, the Police would have been made aware of the other two complaints, one of them being the complainant's.

We asked the Advisor if he had disclosed the complainant's identity to the Police Chief. He stated that although he did not specifically recall disclosing this information, he probably did.

We also spoke to the Chief. He stated that he could not recall if the Advisor had identified the complainant as having made a complaint. The Chief referred back to his notes of June 16, 1993, which he made during a meeting with the Advisor. He stated that his notes made no mention of the complainant having filed a complaint.

The Chief, however, did recall being informed by another Ministry employee that the Commission had received three letters. The Chief stated that this employee identified the three complainants: a local businessman, the individual whose complaint the Commission had investigated, and the complainant.

Based on the above information, it would be reasonable to conclude that the Ministry disclosed the complainant's personal information to the Police Chief.

Although the Ministry did not specifically indicate, in its original representations, that it was relying on section 42 of the Act for the disclosure to the Police Chief, its submissions appear to be related to this section of the Act. We, therefore, examined whether the disclosure was in compliance with section 42 of the Act; specifically, whether it was in compliance with sections 42(c) and (g) of the Act.

### **Section 42(c)**

As previously stated, section 42(c) of the Act permits the disclosure of personal information "for the purpose for which it was obtained or compiled or for a consistent purpose".

The Ministry submitted that "... in order for individuals, boards etc. to adequately and accurately respond to complaints or allegations and also to fairly determine their own rights, they have to be aware of the nature of the complaint and the person making the allegations or complaints."

Under Issue B, we stated that it was our view that the Ministry (i.e., the Commission) would have obtained or compiled the complainant's personal information for the purpose of dealing with **her** complaint. Since the Commission informed her that it did not have "any jurisdiction to become involved at this stage", and accordingly did not initiate an investigation into her complaint, it cannot be said that her identity as a complainant was disclosed for the purpose for which it had been obtained or compiled.

There may be instances in which such a disclosure to the Police Chief might have been justified, for example, where the disclosure was necessary to determine whether the complaint merited an

investigation. In the circumstances of this complaint, however, we have not been persuaded that this was the case.

It is also our view that the disclosure was not for a "consistent purpose". As previously indicated, section 43 of the Act provides that a disclosure is for consistent purpose only if the individual to whom the information relates "might have reasonably expected" such a disclosure.

It is our view that since no investigation into her complaint had taken place, the complainant could not have reasonably expected that her name or her complaint would be disclosed to the Police Chief. Although the Commission was investigating similar concerns, it did not inform the complainant of the other investigation.

It is our view, therefore, that the disclosure to the Police Chief was not in compliance with section 42(c) of the Act.

### **Section 42(g)**

The Ministry stated that investigations of this nature are conducted under section 25(1) of the Police Services Act (the PSA). It further stated that the investigation conducted by the Advisor fell within the definition of "law enforcement" in section 2(1) of the Act, and that investigations of this nature could lead to proceedings in a court or tribunal and penalties or sanctions may be imposed in accordance with sections 25(4), (5) and (6) of the PSA.

The Ministry further stated that "all relevant aspects must be taken into consideration during the course of any law enforcement investigation. If all factors and aspects are not considered just and fair conclusions or recommendations cannot be made. All relevant aspects would include similar allegations".

Given the Ministry's submission, we examined section 42(g) of the Act with respect to this disclosure. As previously stated, this section permits disclosure 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."

For section 42(g) to apply, the disclosure must be in **aid** of the investigation undertaken. Since the Commission did not initiate an investigation into the complainant's complaint, it is our view that disclosure of her name would not have aided an investigation into her complaint, because no investigation into it took place.

It is also our view that disclosing the complainant's identity would not have aided the investigation into the other individual's complaint, even though the complaints were similar. The complainant's concerns were of the most general nature, unrelated to any specific incident or person. It is difficult to see how her identity could have been of assistance in formulating a response in the investigation of someone else's complaint.

It is, thus, our view that the disclosure of the complainant's personal information, in the circumstances of this complaint, would not have aided the Ministry's (i.e., the Commission's) investigation, and thus was not in compliance with section 42(g) of the Act.

We reviewed the remaining provisions of section 42 and found that none applied to the disclosure of the complainant's personal information to the Police Chief.

**Conclusion:** The disclosure of the personal information to the Police Chief was not 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 personal information to the two individuals was not in compliance with section 42 of the Act.
- The disclosure of the personal information to the Police Chief was not in compliance with section 42 of the Act.

## RECOMMENDATION

The Ministry should take steps to ensure that personal information is not disclosed, except where the disclosure is in compliance with section 42 of the Act.

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

November 30, 1994  
Date

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