



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION 194-084P

THE MINISTRY OF HOUSING

June 8, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Housing (the Ministry). The complainant, an employee of the Ministry, was concerned that in March, 1993, her then acting manager (the Manager) had disclosed her personal information to her Director and to the Ministry's Co-ordinator, Workplace Discrimination and Harassment Prevention Program (the WDHP Co-ordinator), without her consent. The complainant believed that the disclosures had breached the Freedom of Information and Protection of Privacy Act (the Act).

The complainant advised that the disclosures had arisen from her work situation. According to the complainant, her supervisor had confided to her that he was in love with a clerk in their department. He had continuously interrupted her work by talking about his feelings for the clerk. In the complainant's view, her supervisor was sexually harassing the clerk, as the clerk had not returned the supervisor's affections.

The complainant had then discussed her work situation with the Manager. Since the complainant felt that the constant interruptions by her supervisor was negatively affecting her work performance, she had asked the Manager for a transfer out of the department. The complainant said that she had requested that their discussion be kept confidential, and that her Manager had agreed. However, her Manager later informed the Director and the WDHP Co-ordinator that the complainant had made allegations of sexual harassment concerning her supervisor and the clerk. During the course of her investigation, the WDHP Co-ordinator had contacted the complainant who had declined to answer any questions. The WDHP investigation was subsequently dropped.

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 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 defines "personal information" as recorded information about an identifiable individual, including,

...

- (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;

It is our view that the complainant's name together with the fact that she had complained about an alleged harassment of the clerk by her supervisor, was personal information as defined 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 in compliance with section 42 of the Act?

Under the Act, an institution cannot disclose personal information in its custody or under its control except in the circumstances outlined in section 42.

Disclosure to the WDHP Co-ordinator

The Ministry advised that according to the WDHP Directive and Guidelines, the Manager had been required to disclose the complainant's name, and the details of the information concerning the harassment, to the WDHP Co-ordinator. The Ministry was of the opinion that a failure to take such action would have constituted a violation of the Ontario Human Rights Code, the Collective Agreement, and the Public Service Act.

The Ministry further stated that under the WDHP Directive, managers are responsible for maintaining a work environment that is free from harassment and discrimination. Whether or not an employee wishes a matter to be investigated, when a possible instance of harassment or discrimination is brought to a manager's attention, that manager is required to take action. As the alleged victim had not come forward, the WDHP Co-ordinator was advised of the complainant's status as the only known witness. The Ministry also stated that the Manager did not recall the complainant requesting confidentiality.

The Ministry identified the following statements from the WDHP Directive and Guidelines, as supporting the disclosure:

Managers and Supervisors are responsible for initiating, in consultation with appropriate individuals, remedial procedures with respect to discrimination harassment or reprisal as quickly as possible upon becoming aware of it, **whether or not a complaint has been filed**; (emphasis added)

A manager responding to an informal complaint should consult others, such as advisors, investigators, human resources staff, or the WDHP unit before handling an issue...

In our draft report, we stated that it was our view, however, that the above statements did not provide any basis for the disclosure of the complainant's identity in this particular situation, nor was there any support for the disclosure of her identity elsewhere in the WDHP materials provided to us by the Ministry. The Ministry also had not referred us to any particular provisions in the Collective Agreement, the Ontario Human Rights Code, or the Public Service Act that specifically supported the disclosure.

In our draft report, we acknowledged that the Ministry had obligations under the WDHP Directive and the Human Rights Code to deal with the complainant's allegations and that there may be situations or times when the identity of a third party i.e. a witness, is required. For example, in this case, after the WDHP Co-ordinator had contacted the complainant's supervisor and the clerk, the investigation was dropped, since the clerk apparently did not feel that any harassment had occurred. Had the investigation proceeded, it may well have been necessary for the Manager to have then disclosed the complainant's name in order to assist in the investigation.

However, it was our view that the Ministry had not demonstrated that in this case, it was necessary for the Manager to disclose the complainant's identity when he initially informed the WDHP Co-ordinator of the situation concerning the complainant's supervisor and the clerk.

In our draft report, we stated that the Ministry had not indicated the section of the Act that it had relied on for the Manager's disclosure to the WDHP Co-ordinator. In its representations on the draft report, the Ministry stated that it had relied on section 42(d) of the Act for the disclosure. This section 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;

In its representations, the Ministry submitted that the WDHP Co-ordinator required the information in the performance of her duties as the individual responsible for implementing the WDHP directive.

The Ministry also stated that "given the object of the WDHP Directives and Guidelines and the relevant legislation is to ensure a harassment-free workplace, inquiries will often extend beyond the party who is the subject of the alleged harassment. In this case, the investigator went on to question the complainant, who refused to participate in the investigation." It was the Ministry's view that, "Therefore, whether or not the clerk and the supervisor had denied or admitted to the allegations, the complainant's evidence would have been required, in order to ensure that all of the relevant evidence was brought to light."

While we accept the Ministry's position that an investigation can extend beyond the party who is the subject of the alleged harassment and that it may be necessary to obtain the evidence of other

individuals, it remains our view that in the circumstances of this case, the Manager did not need to disclose the complainant's name when he first discussed the situation with the WDHP Co-ordinator. It remains our view that at this stage, the WDHP Co-ordinator did not require the identity of the complainant in order to perform her duties under the WDHP directive, and, therefore, the Manager's disclosure of the complainant's personal information to the WDHP Co-ordinator was not in compliance with section 42(d) of the Act.

We have examined the remaining provisions of section 42 of the Act and it is our view that none applied in the circumstances of this case.

Disclosure to the Director

The complainant was also concerned about the Manager's disclosure of her name together with the details of her complaint to her Director without her consent.

In our draft report, we stated that we had asked the Ministry for its position on this disclosure but had received no submissions. However, based on what information we had, it was our view, that the Manager's disclosure to the Director, in the circumstances of this case, was not in compliance with the Act.

However, in its representations on our draft report, the Ministry stated that it had relied also on section 42(d) of the Act for this disclosure. The Ministry advised that the Director was responsible for making final decisions on long term assignments (or re-assignments) in consultation with the Manager. It was the Ministry's view that in this case, in order for the Director to consider the complainant's request for a transfer out of the department, it was necessary for him to know the reason for the request, i.e., that the constant interruptions by her supervisor was affecting her work. The complainant was subsequently re-assigned to a new client group, reporting to a new supervisor.

We have considered the Ministry's representations on this disclosure and agree that in order for the Director to consider and discuss the complainant's request for a transfer, it was necessary for the Manager to disclose to him the details relating to the request. It is, therefore, our view that the Manager's disclosure to the Director was to an employee who needed the complainant's personal information in the performance of his duties and the disclosure was necessary and proper in the discharge of the Ministry's administrative functions. The disclosure was, thus, in compliance with section 42(d) of the Act.

Conclusions: The Manager's disclosure of the complainant's personal information to the WDHP Co-ordinator was not in compliance with section 42 of the Act.

The Manager's disclosure of the complainant's personal information to the Director 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 Manager's disclosure of the complainant's personal information to the WDHP Co-ordinator was not in compliance with section 42 of the Act.
- The Manager's disclosure of the complainant's personal information to the Director was in compliance with section 42 of the Act.

RECOMMENDATION

We recommend that the Ministry take steps to ensure that staff are reminded of the limited circumstances under the Act which permit the disclosure of personal information.

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

June 8, 1995
Date
