



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 I94-064P

### MINISTRY OF MUNICIPAL AFFAIRS

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May 2, 1995



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## **INTRODUCTION**

### **Background of the Complaint**

This investigation was initiated as a result of a complaint concerning the Ministry of Municipal Affairs (the Ministry).

The complainant had been involved with an appeal to the Ontario Municipal Board (the OMB) of a zoning by-law, in a particular town (the Town). Sometime later, the complainant sent a letter to the Minister of Municipal Affairs (the Minister), by facsimile, complaining about the conduct of the Interim Chair of the OMB and requesting that the Ministry investigate the OMB's handling of the appeal.

The complainant stated that although his facsimile cover sheet to the Minister was clearly marked "confidential," the Minister had nonetheless disclosed his letter in its entirety to the Interim Chair who was, "the official about whom I was complaining." The complainant provided us with a copy of the Minister's reply, in which he stated: "... I have noted your concerns and have forwarded a copy of your letter and my response to (the named Interim Chair), for his attention." The complainant believed that this disclosure of his personal information had contravened the Freedom of Information and Protection of Privacy Act (the Act).

The complainant also provided us with a copy of a facsimile cover sheet which an employee of the Ministry had sent to an employee of the Town. In the "Comment" section, the Ministry employee had stated: "As per your request, I have attached a copy of our Minister's recent response to (the named complainant) regarding an OMB matter. I have also attached (the named complainant's) letter." The complainant felt that this disclosure had also violated 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 complainant's personal information disclosed to the Interim Chair of the OMB, in compliance with section 42 of the Act?
- (C) Was the complainant's personal information disclosed to the Town, 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) states, in part:

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

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (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 complainant's letter to the Minister and the Minister's reply contained the following information about the complainant: his name, address and telephone number, his OMB file numbers, the fact that he had requested the Ministry to investigate the OMB's handling of the zoning matter, reference to a letter that the Interim Chair had written to the complainant and another individual, the complainant's view that the OMB had mismanaged this case, and the fact that the complainant's letter constituted a formal complaint regarding the conduct of the OMB's Interim Chair.

In our view, this information met the requirements of paragraphs (c), (d), (e) 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 complainant's personal information disclosed to the Interim Chair of the OMB, 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 stated that section 42(c), disclosure for a consistent purpose, supported its disclosure to the OMB's Interim Chair since the OMB was in the best position to respond to the allegations raised in the complainant's letter.

The complainant stated, however: "I never expected, in writing the letter to the Minister, that he would send that same letter to the person who was the subject of my complaint."

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**" (emphasis added).

Section 43 of the Act 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.

In our view, the Ministry obtained or compiled the complainant's personal information for the purpose of dealing with his complaint.

It is also our view that in order for a complaint to be fairly and properly dealt with, the person complained about must be advised of what they are accused of, and by whom, to enable them to address the validity of the complaint. The complainant must also be informed of the direct response to the allegations.

Therefore, in this particular case, the Interim Chair needed to be given an opportunity to respond to the allegations made against him, thus necessitating the disclosure of the complainant's personal information. And, notwithstanding the complainant's assertion that he never expected the Minister to disclose his letter to the Interim Chair, it is our view that an individual in these circumstances might **reasonably** expect such a disclosure of their personal information, for the proper handling of their complaint. It is thus our view that the Ministry disclosed the complainant's personal information to the Interim Chair for a consistent purpose, in compliance with section 42(c) of the Act.

**Conclusion:** The complainant's personal information was disclosed to the Interim Chair of the OMB in compliance with section 42 of the Act.

**Issue C: Was the complainant's personal information disclosed to the Town, in compliance with section 42 of the Act?**

The Ministry submitted that because the appeal to the OMB involved the Town, and because it was possible that the Town "had other dealings with the Ministry on this or related matters, or otherwise had relevant information," the Ministry employee had contacted the Town "to obtain further information."

The Ministry further submitted that without the complainant's identity, the Town would not necessarily have been able to provide the very information that the Ministry needed. The Ministry stated that information that the complainant had submitted to the Town regarding the matter before the OMB "... might be relevant to the conduct of the chair of the OMB, and therefore to any answer the Ministry employee would make to the Minister."

The Ministry concluded that the complainant could reasonably have expected that it would have disclosed his name "... to those with potentially relevant information, and therefore disclosure was a 'consistent disclosure' within the meaning of s. 43."

As previously cited, under section 42(c) of the Act, 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." Section 43 of the Act further provides that a disclosure of information is for a consistent purpose only if the individual might reasonably have expected such a disclosure.

As we stated in Issue B, it is our view that the Ministry obtained or compiled the complainant's personal information for the purpose of dealing with his complaint. Since the complaint specifically concerned the OMB's conduct in the matter of the appeal and not the Town's involvement, we are not persuaded that, in these circumstances, the complainant might reasonably have expected that the Ministry would contact the Town for information that "might" be relevant to the Ministry's inquiry into his complaint. Accordingly, it is our view that the Ministry's disclosure of the complainant's personal information to the Town was not for a consistent purpose in compliance with section 42(c) of the Act.

We reviewed the remaining provisions of section 42 and found that none applied in the circumstances of this complaint.

**Conclusion:** The disclosure of the complainant's personal information to the Town was not in compliance with section 42 of the Act.

## **Other Matters**

### **Facsimile Transmission of the Complainant's Personal Information**

Since this complaint concerned the disclosure of the complainant's personal information to the Town via facsimile, we wish to remind the Ministry of our facsimile transmission guidelines. Accordingly, we enclosed with our draft report a copy of the following documents: "Guidelines on Facsimile Transmission Security, June 1989," and "Update on the 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 complainant's personal information was disclosed to the Interim Chair of the OMB in compliance with section 42 of the Act.

- The disclosure of the complainant's personal information to the Town was not in compliance with section 42 of the Act.

## RECOMMENDATIONS

We recommend that the Ministry take steps to ensure that personal information is disclosed only 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:  
Ann Cavoukian, Ph.D.  
Assistant Commissioner

May 2, 1995  
Date

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