



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

INVESTIGATION REPORT

INVESTIGATION I94-057M

A POLICE SERVICES BOARD

March 16, 1995



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 a Police Services Board (the Board).

The complainant was a police constable with the Board. The complainant had filed a complaint with the Board against the Chief of Police (the Chief). The complainant's wife simultaneously filed a complaint against the Chief with the local office of the Police Complaints Commissioner (the PCC). The Police Services Act (PSA) authorizes the Board to administer the public complaints system. Therefore, the PCC forwarded the wife's complaint to the Board.

The Chief rendered a decision with respect to the wife's complaint. In his decision letter to the complainant's wife, the Chief stated that "I am also aware of a complaint against myself that has been initiated by your husband...". The complainant was concerned that this disclosure of his personal information to his wife was not in compliance with the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The complainant also stated that the Chief's decision letter regarding his wife's complaint, which contained his personal information, was forwarded to the PCC. The complainant believed that this additional disclosure was not in compliance with 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 his wife in compliance with section 32 of the Act?
- (C) Was the complainant's personal information disclosed to the PCC in compliance with section 32 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 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;

The information in question was the complainant's name together with the fact that he had filed a complaint against the Chief with the Board. 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 complainant's personal information disclosed to his wife in compliance with section 32 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 32. The Board has relied upon section 32(e) of the Act for the disclosure of the complainant's personal information. Section 32(e) states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;

The Board informed us that the complainant's wife had filed a public complaint with the PCC against the Chief under section 77(1)(b) Part VI, of the PSA.

The Board further informed us that section 41(1)(e) of the PSA states that the duties of a Chief include administering the public complaints system under Part VI of the PSA and, consequently, the complainant's wife's complaint had been forwarded to the Chief. The Board informed us that the Chief found the wife's complaint to be vexatious in nature, and made in bad faith. The Chief directed that no further action be taken. The Board maintained that this decision was made by the Chief in accordance with section 85(1) of the PSA, which states:

At any time before making a decision under section 90, the chief of police may decide that the complaint or part of it shall not be further dealt with under this Part, if he or she is of the opinion that the complaint or part is frivolous or vexatious or was made in bad faith.

The Board submitted that it disclosed the complainant's personal information in order to comply with section 85(2) of the PSA, which states:

The chief of police shall give the Commissioner [PCC], the complainant and the police officer notice of the decision.

The Board maintained that it is customary for the Chief to give the reasons behind his decision in the "notice of the decision". The Board stated that the fact that the complainant had made a complaint against the Chief was part of the evidence used to reach a conclusion with respect to the wife's complaint. The Board maintained that it was proper and fair to inform the wife of the relevant factors considered in ruling her complaint vexatious. Thus, the Board submitted that the disclosure of the complainant's personal information to the wife, as one of the relevant factors in the Chief's decision, was in compliance with section 32(e) of the Act.

It is our view that the word "complying" in section 32(e) of the Act means that there must be a specific requirement for the disclosure in question. Under section 85(2) of the PSA, the Chief was required to provide notice of his decision but not specifically to disclose the complainant's personal information to his wife. It is, therefore, our view that since the Chief's disclosure was not for the purpose of complying with an Act of the legislature, section 32(e) of the Act did not apply in the circumstances of this case.

We have examined the remaining provisions of section 32 of the Act. It is our view that none applied to the disclosure of the complainant's personal information to his wife.

Conclusion: The disclosure of the complainant's personal information to his wife was not in compliance with section 32 of the Act.

Issue C: Was the complainant's personal information disclosed to the PCC in compliance with section 32 of the Act?

The Board has relied upon sections 32(f) and (g) of the Act for the disclosure of the complainant's personal information to the PCC. Section 32(f) and (g) state that an institution shall not disclose personal information in its custody or under its control except:

- (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) if 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 32(f) of the Act to apply, the disclosure must be by a law enforcement institution to a law enforcement agency in Canada. Section 2(1) of the Act sets out the definition of "law enforcement" as:

- (a) policing,

- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The Board is an institution involved in activities which include policing and investigations or inspections that lead or could lead to proceedings in a court or tribunal where penalties or sanctions could be imposed. It is our view that these are law enforcement activities and that the Board is, thus, a law enforcement institution.

In Order P-659, Inquiry Officer Donald Hale examined whether an investigation undertaken by the PCC qualified as a "law enforcement investigation" within the meaning of section 14(2)(a) of the Act. In this Order, he states:

In its representations, the Ministry claims that the PCC has the statutory authority to call a Board of Inquiry to adjudicate on the substance of allegations of police misconduct. The Board of Inquiry is empowered under the Police Services Act to impose penalties or sanctions on officers found to have engaged in unlawful conduct.

The Ministry indicates and I accept that the investigation which resulted in the creation of the record at issue could have led to a Board of Inquiry hearing and possible penalties or sanctions against the officers named in the complaint...the report was prepared in the course of a law enforcement investigation.

Inquiry Officer Hale also stated:

In Order P-416, Assistant Commissioner Tom Mitchinson addressed the application of section 14(2)(a) of the Act to a number of records created by the PCC. He stated that:

In my view, in order for a record created by the PCC to qualify for consideration under either sections 14(1) or (2) of the Act, the PCC must establish that it has a law enforcement mandate ...

The record at issue in this appeal relates directly to the PCC's mandate to investigate possible infractions of the Police Services Act. I also find that, for the purposes of section 14(2)(a), the PCC qualifies as a "law enforcement tribunal" which has the function of enforcing compliance with a law, in particular, the Police Services Act...

It is our view that once a member of the public makes a complaint to the PCC about the conduct of a police officer, such a complaint could result in a disciplinary hearing under section 60 of the PSA, a hearing by a board of inquiry, or cause an information to be laid against the police officer and the matter referred to the Crown Attorney for prosecution. The complaint could, therefore, result in penalties and sanctions against the officer named in the complaint.

Thus, it is our view that the PCC has a law enforcement function and can be considered to be a law enforcement agency. Accordingly, the disclosure of the complainant's personal information by a law enforcement institution, the Board, to the PCC, a law enforcement agency, was in compliance with section 32(f) of the Act.

In light of the above, it is not necessary for us to examine section 32(g) or the remaining provisions of section 32 of the Act.

Conclusion: The Board's disclosure of the complainant's personal information to the PCC was in compliance with section 32 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 to his wife was not in compliance with section 32 of the Act.
- The Board's disclosure of the complainant's personal information to the PCC was in compliance with section 32 of the Act.

RECOMMENDATION

We recommend that the Board take steps to ensure that all Board employees are aware of the disclosure provisions in the Act. For example, all staff members who handle personal information should be reminded in writing of the limited circumstances under which the disclosure of personal information is permitted.

Within six months of receiving this report, the Board 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

March 16, 1995
Date