



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

INVESTIGATION REPORT

INVESTIGATION I94-095P

MINISTRY OF COMMUNITY AND SOCIAL SERVICES



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Community and Social Services (the Ministry).

The complainant was a permanent employee of a Ministry youth detention centre. He also held a part-time position with a named children's aid society (the CAS). A ward of the CAS, who was temporarily in the custody of the Ministry, had told the complainant (as a Ministry employee) that he was afraid of being assaulted by another youth in a court holding cell. The CAS ward was subsequently assaulted by the youth. The complainant was mentioned in the incident report and was suspended for three days with pay while an investigation was conducted by the detention centre. The Ministry also advised the CAS of the incident pursuant to the provisions of the Child and Family Services Act (the CFSA).

The complainant believed that the superintendent at the youth detention centre contacted the CAS and informed them that he had refused to meet with supervisors on two occasions and that the CAS should look into his work performance. It was the complainant's view that the disclosure of this information was contrary to the provisions of 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) Did the Ministry disclose the complainant's personal information to the CAS in accordance with 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,

- (g) the views or opinions of another individual about the individual. ...

- (h) the individual's name if it appears with other personal information relating to the individual...

The information in question was the complainant's name together with the information that he had missed two scheduled meetings and the opinion that his work performance should be monitored.

It is our view that this information satisfied the requirements of paragraphs (g) 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: Did the Ministry disclose the complainant's personal information to the CAS in accordance with section 42 of the Act?

The Ministry informed us that when there is an allegation of child abuse which involves the Ministry, the Ministry is responsible for reporting the incident to the CAS as well as investigating the matter itself. In this case, where an employee, the complainant, had been cited in the incident report, the procedure was that the Ministry was to interview the complainant and then advise the CAS when the interview had been completed, so that the CAS could proceed with its own interview. Both the Ministry and the CAS agreed that this was the practice.

The Ministry stated that the disclosure of information to the CAS had been limited to the complainant's actions with respect to the reported incident. The Ministry acknowledged that the superintendent had told the CAS that the complainant had missed two scheduled meetings with her to discuss the incident. The Ministry denied that the superintendent had told the CAS that the complainant's work performance should be monitored.

The superintendent advised us that she had spoken only with the CAS staff member who was doing the investigation (the Investigator) and that she had not said that the complainant's work should be monitored.

The complainant provided us with the names of five CAS staff members, who according to the complainant, could attest to the superintendent's alleged comments about his performance. Three of the CAS staff members informed us that they had "heard" that the complainant's work performance should be monitored but that they had not spoken directly with the superintendent on this matter.

The CAS director informed us that the CAS could not disclose information provided to the CAS by another party in the course of an investigation. However, the director stated that the CAS's contact with the superintendent was to follow up on the incident to determine whether the harm received by the ward could have been reasonably prevented and to discuss strategies for addressing concerns regarding youths in holding cells.

Based on the information we received from the Ministry, the CAS and the complainant, we are able to determine only that the superintendent told the CAS that the complainant had missed two

scheduled meetings but not whether she also said that the CAS should monitor the complainant's work performance.

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

The Ministry stated that it had relied on section 42(e) of the Act to disclose the complainant's personal information relating to the scheduled meetings to the CAS. Section 42(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 or a treaty, agreement or arrangement thereunder;

The Ministry referred us to the CFSA. Section 72 of the CFSA states in part:

A person who believes on reasonable grounds that a child is or may be in need of protection shall forthwith report the belief and the information upon which it is based to a society.

Section 1.(2) of Regulation 71 under the CFSA states:

The society shall investigate each complaint within twenty-one days after the complaint is recorded ...

In our view the legislation cited by the Ministry did not require the disclosure of the complainant's specific information, i.e., that he had missed two scheduled meetings with the superintendent. Since the CFSA did not impose a duty on the Ministry to disclose this information, section 42(e) of the Act was not applicable.

It is our view, however, that section 42(c) of the Act was the relevant provision in the circumstances of this case. This section states:

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:

- 43. 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.

As previously indicated, it was a part of the agreed practice between the Ministry and the CAS that the Ministry would first interview the complainant. It was normal procedure for the superintendent to advise the CAS when a meeting with the complainant would be held. After the Ministry's meeting was completed, the CAS was to continue its own investigation which included meeting with the complainant. The superintendent stated that she had informed the CAS Investigator of two dates she was to have met with the complainant. However, she stated that when the complainant did not attend these scheduled meetings, she had informed the CAS of this since any delays in the Ministry interviewing the complainant could also affect the CAS, particularly as the CAS was required to complete its own investigation within twenty one days.

In our draft report, we indicated that it was our view that the Ministry would have compiled the complainant's personal information that he had not attended the two scheduled meetings as a part of its investigation into the incident of alleged abuse. The Ministry disclosed this personal information to the CAS so that the CAS would be informed since this could cause a possible delay in the CAS's investigation. The incident had been reported to the CAS; the complainant had been named in the report and the CAS was required to interview him. It was our view that, therefore, the complainant could reasonably have expected that if he did not attend the two scheduled meeting relating to the incident, the Ministry would inform the CAS of this. It was our view that the Ministry's disclosure was for a consistent purpose, in compliance with section 42(c).

Prior to the preparation of our draft report, the complainant had informed us that it was his view that the meetings had been unreasonably scheduled by the superintendent. However, in his comments on the draft report, the complainant subsequently stated that he had never been advised of any such meetings and that there had been no scheduled meetings that he had not attended.

We asked the Ministry for its views on the complainant's statements. The Ministry's position was that the superintendent had scheduled meetings with the complainant which he did not attend; that she had left messages on the complainant's answer machine and his pager about the meetings. However, the superintendent was unable to specify the exact dates of the two scheduled meetings, although she believed that they had been scheduled for September 27 and 30, 1994, respectively. We were also unable to obtain any supporting information from the CAS about these meetings.

We remain of the view that if there had been scheduled meetings and the complainant was advised of them, then he could reasonably have expected the Ministry's disclosure to the CAS that he had not attended these meetings. The Ministry's disclosure would have been in compliance with section 42(c) of the Act. However, given the conflicting information provided to us by the complainant and the Ministry, we are unable to determine if such meetings were scheduled and if the complainant was aware of them. We are, thus, unable to conclude whether or not the Ministry's disclosure to the CAS was in compliance with section 42(c) of the Act.

Conclusion: We are unable to determine if the Ministry's disclosure of the complainant's personal information to the CAS was in compliance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- o The information in question was "personal information" as defined in section 2(1) of the Act.
- o We are unable to determine if the Ministry's disclosure of the complainant's personal information to the CAS was in compliance with section 42 of the Act.

Original signed by:
Susan Anthistle
Compliance Review Officer

Date May 30, 1995
