



**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 I95-081P**

**MINISTRY OF FINANCE**

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**April 2, 1996**



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# INTRODUCTION

## Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Finance (the Ministry). The complainant was concerned that the Ministry had improperly disclosed information about his wife and himself contrary to the provisions of the Freedom of Information and Protection of Privacy Act (the Act).

The complainant's wife was a provincial government employee. On August 9, 1995, she used a facsimile (fax) machine at her place of work to send the complainant's request for access to information under the Act to the Ministry.

Sometime during the week of August 7, 1995, the complainant's wife's supervisor received a telephone call from a legal counsel for the Ministry (Counsel). Counsel advised the complainant's wife's supervisor that she had used the fax machine inappropriately for personal reasons, namely, to send her husband's access request to the Ministry.

## 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;

The information in question was that the complainant's wife had used her employer's fax machine for personal reasons and that the complainant had made an access request under the Act.

It is our view that the information in question 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 both the complainant's and his wife's 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 specific circumstances outlined in section 42 of the Act.

The Ministry acknowledged that Counsel had informed the complainant's wife's supervisor that she had used her employer's fax machine for personal reasons. The Ministry advised us that she had done so on several previous occasions in communicating with the Ministry on personal matters.

The Ministry's position was that government equipment should only be used for government business and not for personal reasons. The Ministry stated that Counsel, this time, chose to inform the supervisor of the inappropriateness of the complainant's wife's personal use of government equipment. The Ministry indicated that in order to convey the exact nature of the "inappropriateness", it was necessary to inform the supervisor that the complainant's wife had used the fax machine to send an access request to the Ministry on behalf of her spouse.

When asked to cite specifically which provision of section 42 of the Act the Ministry was relying on for its disclosure, the Ministry stated that, since the complainant's wife knew that she should not have used the government fax machine for her personal use, she should have reasonably expected that remedial action would be taken by the Ministry in order to prevent recurrence.

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. (emphasis added)

Therefore, the Ministry's disclosure of the complainant's wife's personal information to her supervisor would be for a "consistent purpose" only if she could have reasonably expected such a disclosure.

In our view, the Ministry obtained the complainant's wife's personal information during the course of processing the access request it had received from the complainant. According to the Ministry, its subsequent disclosure of her personal information was to inform the complainant's wife's supervisor of the inappropriateness of her personal use of government equipment. While

we accept the general premise that government equipment should be used for government business, we understand that some government institutions permit personal use of fax machines in certain limited circumstances, in accordance with established policies. It is, therefore, our view that the Ministry would not have known, simply from receiving a fax from her, that the complainant's wife's use of her employer's fax machine was inappropriate and not in accordance with a policy that may have existed at her place of employment.

We have determined that no such policy existed at her workplace. Therefore, it is our view that in the circumstances of this case, in the absence of a policy that specifically stated that employees were not permitted to use the fax machine for personal matters, the complainant's wife could not have reasonably expected that the fax machine was only for business matters nor that the Ministry to whom she had sent the fax would subsequently contact her supervisor.

Further, it is our view that if the intent of the Ministry's contact with the complainant's wife's employer was to ensure that government equipment was being used appropriately, the Ministry could have raised this issue with the employer without identifying the employee involved.

In our view, the Ministry's disclosure of the complainant's wife's personal information was not for a consistent purpose and, thus, was not in compliance with section 42(c) of the Act. We have also reviewed the remaining provisions of section 42 of the Act, and find that none apply to this disclosure.

With respect to the disclosure to the supervisor that the complainant had filed an access request, the Ministry provided no specific comments. However, we have examined the disclosure provisions of section 42 of the Act and it is our view that none applied to the Ministry's disclosure of the complainant's personal information.

**Conclusion:** The personal information in question was not disclosed in compliance with section 42 of the Act.

## SUMMARY OF CONCLUSIONS

- The information in question was both the complainant's and his wife's personal information, as defined in section 2(1) of the Act.
- The personal information in question was not disclosed in compliance with section 42 of the Act.

## RECOMMENDATION

We recommend that the Ministry take steps to ensure that all staff are aware of the limited circumstances under section 42 of the Act which allow the disclosure of personal information. With respect to the disclosure that the complainant had been identified as having filed an access request, our Office has produced a Practice Note entitled "Maintaining the Confidentiality of Requesters and Privacy Complainants". A copy of this Practice Note was enclosed with our draft report for the Ministry's 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

April 2, 1996  
Date

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