



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 I95-033M

### A Municipality

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August 31, 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 Municipality.

The complainant is a former employee of the Municipality's housing corporation. In a letter dated March 9, 1994, the complainant's then District Manager referred to the complainant's inability to work harmoniously with her colleagues and her work history of "conflict, disruption and turmoil," and requested that she obtain a medical certificate attesting to her "psychological and emotional competence." While the complainant refused to provide the medical certificate, she nonetheless questioned the Municipality's authority to collect this information.

In July 1994, the Municipality terminated the complainant's employment, and the complainant subsequently applied for unemployment insurance (UI) benefits. In a hearing to determine the complainant's eligibility for benefits, a Board of Referees for Employment and Immigration Canada (EIC) referred the matter back to the EIC with a request that it obtain more details about the complainant's confrontational style and her inability to work harmoniously with her colleagues.

In response to this request, the Municipality provided the EIC with a copy of a decision of the Ontario Labour Relations Board (the OLRB), which was made further to an application brought to the OLRB by the complainant regarding her union. The complainant submitted that because the OLRB's decision was irrelevant to the EIC's request, the Municipality's disclosure of it violated the Municipal Freedom of Information and Protection of Privacy Act (the Act).

As well as being an employee, the complainant was also a tenant of the Municipality's housing corporation. She stated that the following documents relating to her employment with the Municipality were delivered to her home in an unsecured fashion, in contravention of the Act:

- the aforementioned letter of March 9, 1994,
- a letter dated June 29, 1994 relating to the fact that the complainant had been suspended,
- the complainant's letter of termination dated July 14, 1994, and
- the complainant's 1992 OMERS pension statement.

## 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 Municipality's proposed collection of the complainant's personal information, in compliance with section 28(2) of the Act?

- (C) Was the complainant's personal information disclosed to the EIC, in compliance with section 32 of the Act?
- (D) Was the complainant's personal information protected by the Municipality, in compliance 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,

- (a) information relating to the race, national or ethnic origin, colour, religion, **age**, ...

...

- (c) any **identifying number**, symbol or other particular assigned to the individual,

...

- (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; [emphasis added]

The information that the Municipality had intended to obtain was a medical certificate attesting to the complainant's psychological and emotional competence. In our view, this information would have met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

The information in question also included information contained in the decision of the OLRB, which was:

- the complainant's name,
- a description of the complainant's application to the OLRB and the remedies she had sought, and the OLRB's decision in this regard,
- a description of the incidents about which the complainant had or had not filed grievances, and
- details of an "arrangement" the complainant's union had negotiated with the Municipality respecting the complainant's suspension grievance, and the fact that the complainant had rejected this arrangement.

It is our view that this information met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act.

The information in question also included the March 9, June 29, and July 14, 1994 letters concerning the complainant's employment, and the complainant's 1992 OMERS pension statement, which contained her age, social insurance number and pension information. In our view, this information met the requirements of paragraphs (a), (c) and (h) of the Act.

**Conclusion:** The information in question was "personal information" as defined in section 2(1) of the Act.

**Issue B: Was the Municipality's proposed collection of the complainant's personal information, in compliance with section 28(2) of the Act?**

While the Municipality did not actually collect any information with regard to this incident, it had intended to collect a medical certificate from the complainant attesting to her psychological and emotional competence.

Section 28(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. (emphasis added)

The Municipality submitted that its proposed collection of the medical certificate was necessary to the proper administration of a lawfully authorized activity. It stated: "the request for a medical certificate was necessary in order for (the named housing corporation) to carry out its role in managing staff."

The Municipality explained that the complainant was given the option of obtaining the medical certificate from a medical practitioner of her choosing. It added, however, that if the complainant had failed to provide the medical certificate within the required deadline, the housing corporation would have made an appointment with the Municipality's Occupational Health, Safety and Rehabilitation Division, as per Article 39 of the collective agreement between the housing corporation and the complainant's union.

Article 39 states that the housing corporation shall adopt or agree to a rehabilitation policy the same as the Municipality's.

The Municipality provided us with a copy of its rehabilitation policy, which consists, in part, of a memorandum dealing with "Absenteeism and Poor or Declining Performance." In the memorandum, the following is stated:

If however, the employee's performance and/or attendance record are poor, and the supervisor/manager feels there may be a medical problem, he/she may be

referred to Employee Health Services under the following clause in the [named] Collective Agreement and [named] memorandum of understanding:

"10:16 - That the [Municipality] may require any employee to submit to a medical examination by a physician designated by the [Municipality]."

We concur with the Municipality that managing staff is a lawfully authorized activity. It is also our view that in certain limited circumstances it is necessary for an employer to obtain a medical assessment with respect to an employee who is exhibiting poor performance or attendance, and the supervisor or manager feels there may be a medical problem. Thus, assuming -- without deciding -- that the complainant's behaviour was disruptive, we find that the proposed collection of the medical certificate would have been necessary in the circumstances.

**Conclusion:** The Municipality's proposed collection of the complainant's personal information would have been in compliance with section 28(2) of the Act.

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

As previously mentioned, a Board of Referees for Employment and Immigration Canada (EIC) had referred the matter of the complainant's eligibility for UI back to the EIC with a request that it obtain more details about the complainant's confrontational style and her inability to work harmoniously with her colleagues.

The Municipality stated that a copy of the Board of Referees' request was sent to the housing corporation, and that, subsequently, the EIC contacted the housing corporation and asked for the additional details sought by the Board of Referees. The Municipality stated that in replying to the request, the EIC was informed of the OLRB decision, a matter to which the complainant was a party, and the housing corporation an intervenor. The Municipality stated that the EIC then requested a copy of the OLRB decision, and the Municipality provided it with one.

The Municipality submitted that its disclosure of the OLRB decision to the EIC was in compliance with section 32(c) of the Act, which 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."

The Municipality further submitted that: "... the complainant should reasonably have expected that, in view of the decision of the Board of Referees to refer the matter back for further details on her style and behaviour, such pertinent information as the Ontario Labour Relations Board Decision would be disclosed to the Unemployment Insurance Commission (i.e., Employment and Immigration Canada)."

In our view, the Municipality obtained or compiled the complainant's personal information contained in the decision of the OLRB to deal with labour management issues arising out of its employment of the complainant. Since the Municipality disclosed the OLRB decision to the EIC further to the proceedings regarding the complainant's eligibility for UI benefits, another labour

management issue, it is our view that the Municipality disclosed the complainant's personal information for the "same purpose," in compliance with section 32(c) of the Act.

**Conclusion:** The complainant's personal information was disclosed to the EIC, in compliance with section 32 of the Act.

**Issue D: Was the complainant's personal information protected by the Municipality, in compliance with the Act?**

As previously mentioned, as well as being an employee, the complainant was also a tenant of the Municipality's housing corporation. The complainant stated that certain documents relating to her employment with the Municipality were delivered to her in an unsecured fashion, in contravention of the Act.

Sections 3(1) and (2) of Regulation 823 under the Act state:

- (1) Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.
- (2) Every head shall ensure that only those individuals who need a record for the performance of their duties shall have access to it.

**Letters of March 9, June 29 and July 14, 1994**

The complainant stated that the original copies of the aforementioned letter of March 9th and her letter of termination, dated July 14, 1994, were initially given to her Superintendent by her Manager. The complainant added that she had subsequently found these letters taped to the door of her unit in unsealed envelopes. The complainant was concerned that anyone in the building could have read these letters.

The Municipality submitted that, to the best recollection of the Manager, the original copies of the letter of March 9th and the termination letter of July 14th were in sealed envelopes, hand delivered by the Superintendent. The Municipality added that, according to the Superintendent, the letters were not taped to the door of the complainant's unit, but were pushed under her apartment door.

The complainant later clarified that the March 9th letter was in fact pushed under her apartment door, but in an unsealed versus sealed envelope. She further clarified that it was a letter dated June 29, 1994, relating to her suspension, that had been taped to her door in an unsealed envelope, instead of the March 9th letter.

Given the differing accounts of how these letters were delivered to the complainant, we are not able to make a conclusive finding as to whether the complainant's personal information was protected in compliance with the Act, with regard to these letters.

## **Pension Statement**

The complainant stated that on January 19, 1994, her then Superintendent handed her a large envelope -- the type used for repeat delivery of interdepartmental correspondence. The complainant explained that the envelope contained her confidential 1992 OMERS pension statement, which included her age, social insurance number and pension information. The complainant questioned why a confidential document would be delivered to her in this unsecured fashion, when, on the contrary, she had observed the Superintendent and the Assistant Superintendent open their pension statements which were delivered in sealed OMERS envelopes.

The Municipality submitted that no pension material was sent to staff of the housing corporation on January 19, 1994. It added that the 1992 pension statements were distributed to staff in late December 1993 or early January 1994, in sealed OMERS envelopes.

The Municipality also stated that, at the complainant's request, OMERS revised the beneficiary information on the complainant's 1992 statement. The Municipality added that neither its own employee, who administered OMERS internally, nor the OMERS employee who had revised the complainant's statement, could recall if the revised statement had been sent to the housing corporation "in an individual OMERS envelope or if both copies were sent to the employer in a manila envelope." The Municipality further stated that, on April 11, 1994, a revised statement and a covering memo were placed in a sealed manila envelope, stamped "Confidential" and mailed directly to the complainant's home address.

The complainant subsequently clarified that she had received her 1992 OMERS statement on February 24, 1994, not January 19, 1994.

Given the differing accounts of how the complainant's 1992 pension statement was delivered to the complainant, we are not able to make a conclusive finding as to whether the complainant's personal information was protected in compliance with the Act, in this regard.

**Conclusion:** Our findings are inconclusive as to whether the complainant's personal information was protected by the Municipality, in compliance with the Act.

## **SUMMARY OF CONCLUSIONS**

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Municipality's proposed collection of the complainant's personal information would have been in compliance with section 28(2) of the Act.

- The complainant's personal information was disclosed to the EIC, in compliance with section 32 of the Act.
- Our findings are inconclusive as to whether the complainant's personal information was protected by the Municipality, in compliance with the Act.

Original Signed By:  
Susan Anthistle  
Compliance Review Officer

August 31, 1995  
Date

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