



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

INVESTIGATION REPORT

INVESTIGATION I95-039P

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

August 25, 1995



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INTRODUCTION

Background of the Complaint

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

The complainant, an employee of the Ministry, had lodged a complaint with the Ministry regarding the actions of two of its directors. The Ministry had appointed an investigator from Management Board (the Investigator) to look into her complaint. The complainant's letters about her complaint had then been disclosed by the Ministry to the Investigator.

The complainant stated that, at the time of the disclosure, she and the Ministry had not yet agreed about whether the Investigator would be the individual assigned to her complaint. The complainant stated that, since another individual was subsequently appointed instead of the Investigator "to hear other concerns which would have included the one [the Investigator] was asked to investigate", her personal information had been prematurely sent to the Investigator, without her consent.

The complainant was concerned that the Ministry's disclosure of her personal information to the Investigator had been contrary to 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 so,
- (B) Was the Ministry's disclosure of the personal information 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 states that personal information means recorded information about an identifiable individual, including,

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

The information in question was contained in the complainant's letters, and included the complainant's name together with information about her complaint against the two directors.

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 personal information as defined in section 2(1) of the Act.

Issue B: Was the Ministry's disclosure of the personal information in compliance with section 42 of the Act?

The complainant stated that her personal information had been prematurely sent to the Investigator since an agreement about whom the assigned investigator would be had not been reached and since another individual was subsequently appointed to investigate. When the Investigator was assigned to look into the complaint, the complainant initially objected to her being selected. The complainant, however, later stated in a letter to the Deputy Minister (the DM) that, while it was her belief that the process was not impartial because of the particular investigator assigned, "as my Deputy, your decision in this matter is respected."

The complainant also stated that in a subsequent discussion with the Ministry, the Assistant Deputy Minister (the ADM) suggested that she prepare and send him her own release form for the disclosure of the information in question to the Investigator, but she did not do this. The complainant stated that, since the ADM had requested that she take this action "after-the-fact", he was aware that a violation of her privacy had taken place at the time the information had been disclosed to the Investigator.

Under the Act, personal information cannot be disclosed except in the specific circumstances outlined in section 42 of the Act.

The Ministry stated that it had relied upon sections 42(c) and 42(d) of the Act for its disclosure of the personal information in question. Section 42(c) states that "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 Ministry advised us that the complainant had made some very serious allegations about the actions of the two directors. In a letter to the Ministry dated May 24, 1994, the complainant had stated that her complaint warranted the intervention of the DM. According to the Ministry, the complainant had, both verbally and by electronic mail, notified the Ministry that she wanted the complaint either to be directed back to her director or to have an independent investigator assigned.

On June 2, 1994, the DM wrote to the complainant advising her that a formal review of the matter would take place. He stated that he would arrange for someone to review these matters and report to him with findings and recommendations. On June 20, 1995, the DM notified the complainant that the Investigator had been assigned to conduct the investigation.

The Ministry stated that "it was never held out to [the complainant] that there would be an 'agreed' upon investigator or protocol for the investigation." The Ministry stated that it was the prerogative of the DM, as the person having charge of the administrative affairs of the Ministry, to cause investigations to be conducted when allegations such as those made by the complainant were made. As well, the complainant had asked that the Ministry assign an independent investigator.

When the complainant's personal information was disclosed to the Investigator, it was the intention of the DM that the Investigator would be the individual who would conduct an investigation into the complainant's allegations. Some preliminary work was done by the Investigator and it was not until April 1995 that another person was assigned to look into other matters concerning the complainant, as well as to investigate her complaint about the directors.

The Ministry stated that under section 42(c) of the Act, the Ministry's disclosure to the Investigator was consistent with the purpose of having the matter reviewed, which was the reason the complainant wrote to the Ministry. The Ministry suggested that it should have been foreseeable by the complainant that her personal information would have to be reviewed in any investigation that took place. The Ministry stated that the disclosure of the complainant's personal information was, thus, in compliance with section 42(c) of the Act.

In our view, the Ministry obtained or compiled the complainant's personal information for the purpose of dealing with the complaint she had lodged against the two directors. The DM, being responsible for the administrative affairs of the Ministry, determined that the allegations made by the complainant warranted an investigation and had, thus, arranged for the Investigator to deal with her complaint by reviewing the matter and reporting to him. It is our view that the DM was not required to obtain the complainant's agreement about whom the assigned investigator would be. Further, the complainant had stated that she respected the DM's decision in the matter of his selection of the Investigator.

The complainant stated that, while she understood that it might have been necessary for information about her complaint to be forwarded to the Investigator, her actual complaint letters to the Ministry should not have been sent. However, it is our view that the Ministry disclosed the complainant's actual documents containing her personal information to the Investigator for the purpose of ensuring that the Investigator, who had been assigned to deal with this complaint, would conduct a thorough and accurate investigation and that, ultimately, an appropriate and full response to the complainant's allegations would be provided. It is, thus, our view that the Ministry's disclosure of the complainant's personal information to the Investigator was for the purpose for which the information was obtained or compiled, i.e. to deal with the complaint, in compliance with section 42(c) of the Act.

Since the Ministry's disclosure of the complainant's personal information was in compliance with section 42(c) of the Act, we did not address the application of section 42(d) of the Act.

Conclusions: The complainant's personal information was disclosed in compliance with section 42 of the Act.

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 in compliance with section 42 of the Act.

Original signed by:
Susan Anthistle
Compliance Review Officer

August 25, 1995
Date
