



**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 I95-024P**

**MINISTRY OF COMMUNITY AND SOCIAL SERVICES**

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**November 30, 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/Téloc: 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 regional centre of the Ministry of Community and Social Services (the Ministry).

The complainant was the successful candidate in a job competition at the centre. Four of the unsuccessful candidates filed a grievance through the Ontario Public Service Employees Union (OPSEU) stating that management should have granted them an interview. OPSEU requested that management disclose the records that it had relied on in making the decision to grant interviews to some individuals and not to others.

The Ministry's human resource representative agreed, at a formal stage II grievance hearing, to provide OPSEU with the requested records. The records disclosed included the complainant's résumé and covering letter.

The complainant felt that the Ministry's disclosure contravened 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) 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,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

- (d) the address, telephone number, fingerprints or blood type of 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;

The information contained in the complainant's résumé and covering letter included his name, address, job experience, education, and references. It is our view that this information met the requirements of paragraphs (b)(d) and (h) of the definition of "personal information" in section 2(1) of the Act.

**Conclusion:** The records in question contained the complainant'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?**

The Ministry advised that OPSEU had filed a grievance in accordance with Article 27 - "Grievance Procedure of the Collective Agreement between the Crown in Right of Ontario as Represented by Management Board Secretariat (MBS) and OPSEU". The grievance claimed that management had violated the provisions of article 4 of the collective agreement (Posting and Filling Vacancies or New Positions). OPSEU had requested disclosure of the information that management had relied upon for its decision to interview some applicants and not others.

The Ministry stated that it had been "obliged to give primary consideration to the relative qualifications and abilities of the candidates in arriving at a selection decision under the terms of the collective agreement" and that in determining whether or not a breach of the Collective Agreement had actually occurred, it was "necessary to have an objective assessment of all pertinent information available with respect to the candidates including information contained in an employee's resume and covering letter." The Ministry also stated that if this matter was not resolved at this stage, OPSEU in claiming that the employer violated the collective agreement would be entitled to pursue the matter to the Grievance Settlement Board for final determination.

The Ministry further submitted that it had disclosed the complainant's résumé and covering letter to OPSEU in accordance with an August 5, 1994 agreement between the parties to the collective agreement. This "agreement" was set out in a letter from the Co-ordinator, Collective Agreements Administration, Negotiations Secretariat, MBS, to the First Vice-President/Treasurer of OPSEU (the letter of agreement). The Ministry submitted, therefore, that the disclosure of the complainant's résumé and covering letter to OPSEU was in accordance with section 42(e) of the Act which 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;

We examined a copy of the letter of agreement. The letter of agreement stated that "Pursuant to section 42(e) of the Freedom of Information and Protection of Privacy Act, the parties agree to the following in support of the principle of mutual disclosure to facilitate the effective resolution of disputes..." Under item three of the letter of agreement, it stated that in job competition grievances, the employer was obligated to give to the union, upon request of the union, the following information "relative to a grievance claiming a violation of the job posting provisions of the collective agreement":

- . copy of job posting
- . selection process, including questions, prescribed answers and candidates answers
- . selection panel
- . selection criteria
- . number of applicants
- . ranking of applicants by seniority date
- . scoring of candidates in order of seniority
- . identification of griever by name, seniority, ranking and score

Candidates' résumés and covering letters, however, were **not** included in this list.

In response to our draft report, the Ministry stated that "the investigation report does not recognize that the essential part of the Disclosure Agreement (the letter of agreement) refers to the information upon which management "relied". In this case, the managers relied upon the resume as they were determining which individuals would be interviewed and which would not be interviewed."

The Ministry also stated that "the list presented is by way of example; it is not an all encompassing catalogue of all information which might be relied upon in the course of carrying out the selection process."

Assuming that the letter of agreement could be said to be an "agreement" under an Act of the Legislature or Parliament within the meaning of section 42(e), it is, nevertheless, our view that the Ministry's disclosure was not in accordance with section 42(e).

In our view, where an institution purports to disclose personal information to a third party pursuant to an agreement under section 42(e), it must ensure that the agreement authorizes disclosure of the specific information at issue, or that such information is reasonably encompassed within the description of the information which is contemplated will be disclosed.

In this case, item three of the letter of agreement specifically states what should be disclosed by the employer to OPSEU with respect to job posting grievances. Item three does not say that it is listing examples of information to be disclosed. Rather, it says that "the parties agree that the employer is obliged to give OPSEU, upon its request, the following information..."

It is also our view that none of the items of information listed could reasonably be said to encompass résumés and covering letters, although this type of information is perhaps one of the most common features of job competitions and it would be reasonable to assume that they were considered for possible inclusion on this list, but were rejected.

Item two of the letter of agreement states that “ Disclosure will include all facts upon which the employer relied to make the decision.” In our view, however, the Ministry cannot rely on a completely open-ended provision, since this would leave the disclosure of sensitive personal information to the realm of happenstance, rather than to an agreement related specifically to the information or type of information in question.

Therefore, since the letter of agreement does not expressly authorize the disclosure of résumés and covering letters, it cannot be said that the Ministry’s disclosure of the complainant’s résumé and covering letter was for the purpose of complying with an “agreement”, in accordance with section 42(e) of the Act.

In the event that it was necessary for the Ministry to provide OPSEU with information to determine if there had been a breach of the collective agreement, it is our view that not all information in a résumé or covering letter would have been relevant to such a determination. Therefore, even if résumés and covering letters were covered by the letter of agreement, it is our view that only information in these documents that was directly related to the issues raised by the grievance would need to have been disclosed in order to comply with the letter of agreement. Specifically, it is our view that it was not necessary for certain personal information, including the candidate's name, address, telephone number, and other personal identifiers to have been disclosed.

We also considered the Ministry's submissions with respect to the remaining provisions of section 42 of the Act. However, it is our view that none were applicable to the Ministry's disclosure of the complainant's résumé and covering letter to OPSEU.

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

## **SUMMARY OF CONCLUSIONS**

- The records in question contained the complainant's "personal information" as defined in section 2(1) of the Act.
- The personal information was not disclosed in compliance with section 42 of the Act.

## **RECOMMENDATION**

We recommend that the Ministry take steps to ensure that personal information is not disclosed except in compliance with the Act. For example, the Ministry should include in any relevant policies or procedures, the requirement to sever unnecessary personal information and other personal identifiers from candidates' résumés, covering letters and other documents before these are disclosed to OPSEU.

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:**

Ann Cavoukian, Ph.D  
Assistant Commissioner

**November 30, 1995**

Date

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