



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 I95-099P

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

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May 31, 1996



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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, a Ministry employee, was concerned about the disclosure of a document entitled “Complaint re: Communication Instruction” (the record). This record outlined his complaint about management and formed part of his formal grievance against the Ministry. The complainant stated that he had given his supervisor the record during discussions with her. However, his supervisor disclosed the record without his consent to the Assistant to the complainant’s Branch Director, who subsequently forwarded the record to two other individuals in the Ministry’s Human Resources Department.

The complainant felt that the Ministry’s disclosures 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,

- ...
- (e) the personal opinions or views of the individual except where they relate to another individual,

The record was a written statement of the complainant’s complaint about management and included his views and opinions about management policies and procedures. It is our view that

this information met the requirements of paragraph (e) of the definition of “personal information” in section 2(1) of the Act.

**Conclusion:** The record 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 confirmed that the record was related to the complainant's grievance. It stated that both the first and second stage of the grievance had been denied and that the grievance was currently awaiting a board hearing.

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. The Ministry submitted that its disclosures were in compliance with section 42(d) of the Act which states:

An institution shall not disclose personal information in its custody or under its control except,

- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

#### Disclosure to the Assistant to the Branch Director

The Ministry stated that the complainant had asked that his complaint be brought to the attention of the Assistant Deputy Minister (ADM) as one of the conditions for the settlement of his complaint.

Although the Ministry did not provide us with any written policies or procedures, the Ministry submitted that in accordance with its long-standing chain-of-command practices, all correspondence forwarded to the ADM's office must first be signed off, or approved, by the Branch Director. The complainant's supervisor, therefore, sent the record to the Assistant to the Branch Director for sign-off. The Assistant, however, did not forward the record to the ADM's office but to the two individuals in the Human Resources Branch.

Having considered the Ministry submissions, it is our view that the Ministry has not fully demonstrated that the Assistant to the Branch Director needed the complainant's personal information contained in the record in the performance of her duties and that the disclosure was necessary and proper in the discharge of the Ministry's functions.

#### Disclosure to Human Resources by the Branch Director's Office

The Ministry stated that similarly, in accordance with its chain-of-command procedures, the record was subsequently forwarded to two management staff in the Human Resources Branch, whose duties include grievance processing, and status briefings when grievances are forwarded to the ADM. The Ministry submitted that, therefore, the disclosure to the two individuals was to employees who needed the record in the performance of their duties, i.e., to process grievances.

While we accept that the processing of grievances is a function of the Ministry, it is our view that the Ministry has not adequately shown why both individuals required the complainant's personal information contained in the record in the performance of their duties.

In summary, in the absence of a more comprehensive explanation from the Ministry, we are not persuaded that the disclosures were made in compliance with section 42(d) of the Act. We have examined the remaining provisions of section 42 of the Act, and it is our view that none applied to the Ministry's disclosures.

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

## SUMMARY OF CONCLUSIONS

- The record 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 takes steps to ensure that personal information is not disclosed except in compliance with section 42 of the Act, for example, by reviewing its chain-of-command practices to ensure that disclosure is only on a need-to-know basis.

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

May 31, 1996  
\_\_\_\_\_  
Date

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