



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

INVESTIGATION REPORT

INVESTIGATION I95-096P

**MINISTRY OF THE SOLICITOR GENERAL AND
CORRECTIONAL SERVICES**

June 13, 1996



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of the Solicitor General and Correctional Services (the Ministry). The complainants are a husband and wife whose home was destroyed by fire. The Ontario Provincial Police (the OPP) investigated the fire and interviewed several individuals, including the complainants, their friends and neighbours, and the former owner of the property. The results of the interviews were recorded as witness statements.

The complainants' insurance company disputed its obligation to provide insurance coverage, alleging that the fire had been deliberately set. (The matter is currently the subject of civil litigation between the insurance company and the complainants.)

The complainants then made an access request to the Ministry under the Freedom of Information and Protection of Privacy Act (the Act) for copies of records relating to the police investigation, and received severed versions of the occurrence report and witness statements. The complainants later found that an insurance adjuster assigned by the insurer to investigate their claim had received unsevered copies of the witness statements and the occurrence report from the OPP.

The complainants believed that the Ministry's actions in disclosing the unsevered records to the insurance adjuster had breached the disclosure provisions of 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) Did the Ministry disclose the personal information 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, that "personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(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,

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

...

(g) the views or opinions of another individual about the individual, and

(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 contained in an occurrence report and in a series of witness statements provided to the OPP by the complainants and other named individuals, including the complainants' friends, neighbours, relatives, and the former property owner. These records contained information such as names of individuals, their dates of birth, their home addresses, financial details of the purchase of the property, and individuals' descriptions of the events that took place the day of the fire.

In our view, the information in question met the requirements of paragraphs (a),(b),(d),(e),(g) and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was the complainants' and the witnesses' "personal information", as defined in section 2(1) of the Act.

Issue B: Did the Ministry disclose the personal information in compliance with the Act?

Under the Act, an institution shall not disclose personal information except in the circumstances outlined in section 42. The Ministry submitted that the disclosures of personal information were in accordance with section 42(c) of the Act.

Section 42(c) of the Act 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;

Section 43 of the Act states:

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.

In this case, the personal information was collected by the OPP for the purposes of law enforcement (i.e. the investigation of a possible arson). Some of the personal information at issue was collected directly from the complainants when they gave their statements. Therefore, the reasonable expectations of the complainants in providing the statements to the OPP would determine whether the disclosure had been made for a consistent purpose.

The Ministry submitted that “it was reasonable to expect that the information would be disclosed to the insurance company, as the insurer has a vested interest in the insured property.”

It is our view that many parties may have an interest, financial or otherwise, where a crime may have been committed. For example, the victim, the accused, the families of both, and property holders all could have an interest in the matter. However, it is our understanding that witness statements containing individuals’ personal information are not provided to parties with an interest, financial or otherwise, by the OPP as a matter of course. In our view, an individual would not reasonably expect that a statement he or she had given to the police would be disclosed to a private insurance company, simply because the insurer had a vested interest in the property. Therefore, it is our view that the personal information that was directly collected was not disclosed in compliance with section 42(c), for a consistent purpose.

Other personal information was collected indirectly from the witnesses when they gave their statements. Where personal information is collected indirectly, a consistent purpose is one where the purpose for the disclosure is reasonably compatible with the purpose for the collection. The Ministry stated that case information was disclosed to the insurance adjuster in the interest of eliciting information from the insurer which could contribute to the OPP investigation process. The Ministry submitted that in the circumstances of this particular case, the release of the information to the insurance adjuster was reasonably compatible with the purpose for collecting the information, the ongoing investigation of a possible arson.

It is our view that the OPP investigation would have benefitted from the *collection* of personal information from the adjuster but that the adjuster would have benefitted from the *disclosure* of the personal information, because his investigation was furthered. Therefore, it is our view that the personal information was disclosed for the purpose of assisting the adjuster in furthering the insurance investigation, rather than for the purpose of furthering the OPP investigation.

Although a law enforcement investigation and an investigation by a private company may be related, they would serve different purposes - one, to enforce the law; the other, to serve the interests of the private organization, financial or otherwise. In this case, the insurance company was disputing its obligation to pay, and the matter was to be settled in civil court. Thus, it is our view that the disclosure of personal information for the purpose of furthering the insurance investigation was not reasonably compatible with the purpose of furthering the law enforcement

investigation. Therefore, it is our view that the personal information that was indirectly collected was not disclosed in compliance with section 42(c), for a consistent purpose.

We also considered section 42(f)(ii) of the Act which permits disclosure of personal information by a law enforcement institution to another law enforcement agency in Canada, and section 42(g), which permits disclosure to an institution or a law enforcement agency in Canada to aid an investigation. It is our view that these exceptions to non-disclosure do not extend to private investigations by insurance companies.

We examined the other exceptions under section 42, and found that none applied. Accordingly, it is our view that the personal information was not disclosed in compliance with section 42 of the Act.

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

SUMMARY OF CONCLUSIONS

- The information in question was the complainants' and the witnesses' "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.

RECOMMENDATIONS

The Ministry indicated that OPP staff often seek advice from the Ministry's Freedom of Information and Privacy Office when they have concerns about possible breaches of privacy. However, in this case, the OPP did not seek advice before disclosing the personal information.

We recommend that the Ministry advise the OPP of the findings of this investigation, with a view to encouraging staff to seek advice to prevent similar breaches from happening in the future.

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: _____

June 13, 1996 _____

Susan Anthistle
Compliance Review Officer

Date