



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

INVESTIGATION REPORT

INVESTIGATION I96-113P

MINISTRY OF ENVIRONMENT AND ENERGY

May 13, 1997



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Environment and Energy (the Ministry).

The complainant was employed by a Village at a sewage treatment plant. As a plant manager, the complainant was required to have an operator's license issued by the Ministry. The complainant had written to the Ministry on several occasions regarding his license, as there was a disagreement about the class of the license that had been issued.

On November 3, 1995, a Manager in the Ministry's Human Resources Branch (the Manager) received a letter from a third party stating that "The Mayor of [the Village] has asked me to review the efforts of their senior operator and plant manager [the complainant] for the Village waste water plant to obtain certification." With this correspondence, the third party had enclosed copies of four letters written by the complainant to the Ministry regarding his license.

On January 3, 1996, the Manager responded to the third party's letter. As part of her response, the Manager attached a copy of a letter, dated January 2, 1996, she had sent to the complainant regarding his license. On January 11, a copy of this letter was also sent to the third party by facsimile.

The complainant was concerned that the disclosure to the third party of his personal information in the letter of January 2, 1996, was 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 yes,
- (B) Was the 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, in part:

"personal information" means 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 where 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 in question was contained in the letter dated January 2, 1996, to the complainant from the Ministry regarding his operator's license. The letter included the complainant's home address, information about his employment history, and information about his license, including its status. In our view, this information met the requirements of paragraphs (b), (d), and (h) of 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 disclosure of the complainant's personal information in compliance with section 42 of the Act?

The Ministry stated that, since the third party had been asked by the Village's mayor to review the complainant's "efforts" respecting his license and since he had copies of letters which included the complainant's home address, it was sufficient to treat the third party as a consultant for the Village.

The Ministry further stated that providing the third party with a copy of the letter dated January 2, 1996 was "not an invasion of his personal privacy" and that, since the third party was working on behalf of the Village, "providing certification information is necessary to the Village's responsibility to employ qualified staff in the operation of their water pollution control plant."

The complainant stated that he did not believe that the third party was employed by the Village. He also stated that he had made the Village aware of his situation regarding the status of his license and, therefore, there was no need for the third party to contact the Ministry for additional information. The complainant submitted that, although he could accept that the Ministry might have been required to disclose the status of his license, he objected to the disclosure of the letter itself since it contained additional personal information.

Under the Act, an institution cannot disclose personal information except in the specific circumstances outlined in section 42 of the Act. The Ministry did not refer to the specific provision it had relied upon under section 42 for the disclosure of the personal information. However, based upon the Ministry's comments, it would appear that it was relying upon section 42(d) of the Act. It is also our view that section 42(c) is relevant to this case.

Sections 42(c) and (d) state:

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**; (emphasis added)

(d) where the 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;

Section 43 of the Act further provides that:

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 his correspondence to the Manager, the third party stated that the Village wanted to know "what if anything they can do to expedite a conclusion to this issue" and asked that "anything that you or your staff could advise me ... by phone, fax or letter would be appreciated."

It is our view that the Ministry would have obtained some of the personal information contained in the letter of January 2, 1996 for the purpose of determining the complainant's license level. It is also our view that the Ministry disclosed this personal information to the third party in order to respond to his request for information about the complainant's certification.

Since the complainant indicated that he could accept the Ministry having to disclose the status of his license to the third party, it is our view that he might reasonably have expected the disclosure of this information in response to the third party's inquiry on the Village's behalf. The disclosure of the status of the complainant's license was, thus, for a "consistent purpose", in compliance with section 42(c) of the Act.

However, it is our view that the complainant would not have reasonably expected that the letter itself would be disclosed since it contained other personal information, in addition to the status of his license. In our view, the disclosure of the additional personal information in the letter was not for a "consistent purpose" and, therefore, was not in compliance with section 42(c) of the Act.

With respect to section 42(d) of the Act, we have reviewed the letters written by the complainant that were attached to the third party's correspondence, however, in our view, the complainant did not provide his home address as the Ministry has maintained.

At the complainant's request, we did not contact the Village to determine if the third party was an "employee". In our view, while the third party may have been acting as a "consultant", it is not clear that as a "consultant" he was an "employee" of the Village within the meaning of section 42(d) of the Act. In any event, it is our view that in order for section 42(d) of the Act to apply, the disclosure in question would have to be by "an institution" to an officer or employee of the **same** institution. Since the third party was not an officer or employee of the Ministry, it is our view that section 42(d) would not apply in the circumstances of this case.

We have examined the remaining provisions of section 42 and found that none applied to the disclosure of the complainant's additional personal information contained in the letter.

Conclusion: The disclosure of the status of the complainant's license was in compliance with section 42 of the Act. The disclosure of the letter itself, containing the additional personal information, was not in compliance with section 42 of the Act.

Other Matters

During the course of this investigation, the following matter was identified and brought to the Ministry's attention.

We noticed that the Ministry used a facsimile machine to transmit the complainant's personal information. We reminded the Board of our faxing guidelines and enclosed, with our draft report, a copy of the document: "Guidelines on Facsimile Transmission Security, April 1996".

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The disclosure of the status of the complainant's license was in compliance with section 42 of the Act. The disclosure of the letter itself, containing the additional personal information, was not in compliance with section 42 of the Act.

RECOMMENDATIONS

We recommend that the Ministry take the necessary precautions to ensure that in future, all disclosures of personal information are made in accordance with the Act, for example, by reminding relevant staff of the limited circumstances under which personal information may be disclosed.

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 Reviewed By: _____
Susan Anthistle
Compliance Review Officer

May 13, 1997

Date
