



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

INVESTIGATION REPORT

INVESTIGATION I97-054M

A COUNTY

February 6, 1998



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a privacy complaint regarding a county's social services department (the County).

The complainants were concerned about a form provided by the County to welfare applicants/recipients to record information about job searches. The complainants' view was that the County's requirement that applicants for welfare benefits obtain the signature of prospective employers forced applicants to provide the form to the employer. Thus, the applicant was identified as a recipient or applicant for welfare benefits and was subjected to unnecessary embarrassment and humiliation. The complainants' view was that the disclosure of the status of an individual as a welfare applicant/recipient to a prospective employer contravened the disclosure provisions of the Municipal 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 the complainants' "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did the County disclose the personal information in compliance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question the complainants' "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,

- ...
- (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 job search reporting form includes spaces for the following information: name of welfare applicant/recipient; date; "phone date" (presumably a reporting date); date of contact with employer; employer name; employer address; a space to check off "filed application" or "not accepting" application; and "interviewed by (signature please)". The form is not printed on the County's letterhead.

Although the form itself is not printed on the County's letterhead, it is our view that an employer could draw some reasonable inferences from the form. Job seekers would not use such a form

unless they are required to do so by an agency in a position to confer a benefit or impose a sanction.

We considered other circumstances where individuals who are not welfare recipients might be required to conduct a job search and found that individuals receiving employment insurance benefits are required to conduct a job search. Individuals on probation may also be required to conduct a job search as a term of their probation. Although the job search information is subject to verification by the agencies administering these programs, it is not the agencies' practice to require the individual to obtain a prospective employer's signature on a form. Therefore, an individual who presents a job search form to a prospective employer for the employer's signature would most likely be identifiable as an applicant/recipient of welfare benefits.

Further, in our view, area employers would be familiar with the County's form and, therefore, could conclude that the applicants are welfare applicants/recipients if they are provided with the form for the purposes of affixing a signature.

Thus, it is our view that the fact that the complainants were in receipt of, or were applying for, welfare benefits would be disclosed to the prospective employer if the form was provided to them. It is our view that the complainants' names, together with information that identified them as welfare applicants/ recipients 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 the complainants' "personal information", as defined in section 2(1) of the Act.

Issue B: Did the County disclose the personal information in compliance with section 32 of the Act?

Although the County did not make the disclosure of the complainants' personal information directly to the employer, it is our view that the County's requirement for the complainants to obtain signatures from prospective employers resulted in "constructive disclosure" of the complainants' personal information. In other words, the County was responsible for the complainant's disclosure of personal information to the prospective employer, although the complainants were the instruments of the disclosure.

The Canadian Law Dictionary states that the term "constructive" is applied where a transaction or operation has not really taken place, but something equivalent has. For example, the delivery of the keys of a warehouse in which goods are stored may be considered to be the delivery of the actual goods themselves.

The courts have applied the constructive concept in various types of cases, ruling that the crucial factor is the intention of the party who is alleged to have constructively done something. The party must have intended the result which came about. The courts have further ruled that the intentions of the party may be inferred from the actions of that party. If the party can be shown to have intended the result, then he or she is said to have constructively done that thing.

While the County may not have *desired* that welfare recipients disclose personal information to employers, it appears to have *intended* it as an inevitable consequence of the job seeking process which it dictated.

Under the Act, an institution shall not disclose personal information except in the circumstances outlined in section 32. (See Appendix A for complete text.)

We examined the provisions of section 32 of the Act to determine whether any applied in the circumstances of this complaint. In particular, we considered section 32(b) which states that an institution shall not disclose personal information unless the individual to whom the information relates has identified that information in particular and consented to its disclosure.

There was no indication that the complainants had explicitly consented to the disclosure of their personal information to prospective employers for the purpose of obtaining an employer's signature. However, the complainants would have implicitly agreed to the disclosure by being the instruments of the disclosure. We considered whether their consent would have been vitiated by "economic duress". Common law courts may set aside an agreement obtained by economic duress, or order restitution where a benefit has been obtained through economic duress.¹ Lord Scarman described economic duress as:

Duress, whatever form it takes, is a coercion of the will so as to vitiate consent...There must be present some factor which could in law be regarded as a coercion of his will so as to vitiate his consent. ... In determining whether there was a coercion of will such that there was no true consent, it is material to enquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it.²

With respect to this complaint, we considered whether the complainants had protested about obtaining the signatures; whether they had an alternative course of action open to them; whether they had received independent advice; and whether they had taken steps to avoid obtaining the signatures.

The complainants stated that they had protested to the County about the requirement to obtain signatures and they had also filed a complaint with our office. They stated that they had submitted their job search forms without signatures and had been told by a representative of the County's social services department, "No signatures, no cheque." Their complaint to our office was timely; it was made the day after this incident happened.

¹ Economic duress has been considered by the Ontario Court of Appeal in Lister v. Dunlop (1979), 27 O.R. (2d) 168 and Gordon, in trust v. Roebuck (1992), 9 O.R. (3d) 1

² Pao On et al. v. Lau Yui et al., (1979) 3 All E.R. 65 at 78 (P.C.)

The County had made a condition of receiving welfare that the complainants provide the County with signatures of employers. Eligibility for welfare is also based on an income and asset test - individuals must have little to none of either to qualify. Welfare is for subsistence and is only available to people who do not have an alternative.

According to the complainants, they had received benefits once without providing employers' signatures. When they had provided forms without signatures on another occasion, they stated that they had been told by a representative of the County's social services department, "You could have got those names from a phone book." However, the complainants stated that they told the County's representative that they had no problem with the information on their job search forms being verified. The complainants stated that they had again been told, "No signatures, no cheque". Therefore, it appeared that the complainants had been under pressure to disclose the forms to prospective employers; if they had failed to do so, they would most likely not have received benefits.

There is no evidence that the complainants had received independent legal advice. It is our view that even if the complainants had received independent legal advice, the advice likely would have been to capitulate to the request of the County.

The complainants had made a formal complaint to our office with a view to obtaining a conclusion that the job search process required by the institution was not in compliance with Act. In our view, this, together with the complainant's actions in not providing the signatures, demonstrates that the complainants took steps to avoid fulfilling the County's requirement.

In addition, the Court of Appeal in Gordon said "one must determine whether the coercion exerted on the appellant was legitimate. ...[T]he agreement was not one which could be set aside as one executed under *unjustifiable* economic duress." Therefore, we considered whether the complainants had been subjected to unjustifiable economic duress.

In this case, we acknowledge that the County had a legitimate interest in confirming that welfare recipients were engaged in a job search. However, other agencies that also have a legitimate interest in verifying a job search do so in a manner that better protects the privacy of the individuals. There is no evidence that the more privacy-invasive practice of the County (i.e. requiring the employer's signature) is necessary for it to adequately monitor the applicant's job search. The County submitted that its practice of requiring employers' signatures was instituted to "minimize the need for follow-up calls" to verify the authenticity of job searches. Therefore, it is our understanding that the purpose of the practice of requiring signatures is to reduce the administrative burden on the County.

It is our view that the County has no legitimate interest in applying economic pressure on welfare recipients to disclose their status as welfare recipients/applicants for such a purpose. Therefore, it is our view that the economic pressure on the complainants to conform to this requirement was not justifiable.

Taking all of the above into account, it is our view that any implicit consent given by the complainants for the disclosure of their personal information to the prospective employer was vitiated by economic duress.

Therefore, it is our view that the disclosure of the complainants' personal information to prospective employers, for the purposes of obtaining the employer's signature was not in compliance with section 32(b) of the Act. It is our view that, based on the information available to us, none of the other disclosure provisions applied in the circumstances of this complaint.

Conclusion: The personal information was not disclosed in compliance with section 32 of the Act.

OTHER MATTERS

During the course of this investigation, the following matters were identified which should be brought to the institution's attention.

Requirement to Provide Notice of Collection of Personal Information

The County's current job search form does not contain a notice of collection of personal information as required under section 29(2) of the Act.

Section 29(2) of the Act provides that if personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

Requirement for Verification of Job Search Information

We recognize that the County may, at some point, find it necessary to contact a prospective employer named by a welfare applicant/recipient for verification or auditing purposes and that in the course of such a contact the fact that an individual may be in receipt of, or may have applied for, benefits may be disclosed to a prospective employer when the County's representative identifies himself or herself.

SUMMARY OF CONCLUSIONS

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

- The personal information was not disclosed in compliance with section 32 of the Act.

RECOMMENDATIONS

In our draft report, we recommended that the County:

1. discontinue its practice of requiring welfare applicants to obtain signatures of employers when conducting job searches and amend the County's job search form accordingly.
2. amend the job search form to include a notice of collection of personal information as required under section 29(2) of the Act.
3. advise all individuals required to conduct a job search that the information they provide on their job search form is subject to verification by the County and that the employer may be contacted for verification purposes. We suggest that this information be included on the job search form.

In its submissions regarding the draft report, the County stated that it had revised its job search form as suggested.

It is our view that the County has satisfactorily complied with the above recommendations and therefore, we will be taking no further action on this complaint.

Susan Anthistle
Compliance Review Officer

Date

APPENDIX A

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

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if 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 if the disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
 - (I) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
- (I) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.