



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

INVESTIGATION REPORT

INVESTIGATION MC-000014-1

Toronto Police Services Board

April 9, 2001



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INTRODUCTION:

Background of the Complaint

The Office of the Information and Privacy Commissioner received a complaint submitted by counsel on behalf of a client (the complainant), to the effect that the complainant's privacy had been breached by staff of the Toronto Police Services Board (the Police). The complainant alleges that a detective in the Toronto Homicide Squad contacted his father. In the course of speaking with the father, the complainant maintains that the detective revealed that the complainant was HIV positive. According to the complainant, prior to that conversation, his father did not know his medical status. The complainant also states that he did not consent to the disclosure of his medical information to his family by the Police.

The complainant has presumed that the detective came into possession of information about him through the detective's professional duties, and alleges that such a disclosure contravenes 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 "personal information" as defined in section 2(1) of the *Act*?
- (B) Was the disclosure of the complainant's personal information made in accordance with section 32 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*?

Under section 2(1) of the *Act*, personal information is defined in part as recorded information about an identifiable individual, including information relating to the medical history of the individual. Clearly, the information at issue, the medical status of the complainant, falls within the scope of the definition of "personal information" in section 2(1) of the *Act*.

The Police do not dispute this finding.

Conclusion: The personal information at issue is the personal information of the complainant, as defined in section 2(1) of the *Act*.

Issue B: Was the disclosure of the complainant's personal information made in accordance with section 32 of the *Act*?

During our investigation, the Mediator contacted the complainant's father, who indicated that the conversation with the detective took place in a courtroom in February 2000, during a trial involving the complainant's brother. The detective had been the arresting officer in this case. According to the father, the detective asked him if he had seen the complainant, and when the father indicated that he believed him to be in another province, the detective informed him that in fact, he was in the Don Jail, and that he was HIV positive.

The Freedom of Information Co-ordinator (the Co-ordinator) for the Police questioned the detective about the circumstances identified by the complainant. According to the Co-ordinator, the detective agreed that he had spoken to the complainant's father during the course of the investigation and subsequent trial, but denied disclosing any medical information about the complainant. The detective is of the view that the complainant's medical status was well-known, and states that he would have had no reason to discuss it with the father. The Police also note that the complainant's medical information had been disclosed during court proceedings prior to February 2000, and suggest the possibility that the father learned about the complainant's medical status from another source. The Police state:

[The complainant's] HIV status had been stated in open court on at least one previous occasion. Although this fact may not justify a Service member releasing such sensitive information to a third party, it does suggest that the complainant's HIV status would have been known by several individuals (in attendance at court that day) any one of whom may have been in contact with the father.

It is not possible to determine with certainty which version of events is correct. In my view, the explanation offered by the Police is reasonable and, based on the information provided by the complainant and the Police, I am not persuaded that the detective disclosed the client's personal information in the manner described by the father. That being said, if the disclosure was made by the detective as described by the father, it would constitute an improper disclosure, and would not be in compliance with section 32 of the *Act*.

Conclusion: I am not persuaded that there was an improper disclosure of the complainant's personal information.

In response to receiving a draft version of this report, counsel for the complainant submits that a third issue needs to be addressed. Specifically, the complainant states:

Under [the *Act*], sections 41 through 44 create a mechanism whereby the Commissioner can hear appeals regarding refusals of access and amendment requests. Those sections give the Commissioner the necessary powers to address those appeals. In particular, section 41(8) gives the Commissioner the power to examine any person under oath, and section 41(4) gives the parties the right to counsel. There is no similar scheme for complainants involved allegations of wrongful disclosures. Under the *Act*, the only powers the Commissioner has to address complaints regarding wrongful disclosures are contained in section 46. Section 46 does not give the Commissioner any investigative powers, not does it even give the Commissioner the right to order a head to cease disclosing information in contravention of the legislation. There is no general right to investigate, no powers to compel production or evidence, no power to hold an oral

hearing. As a result, the *Act* creates a scheme whereby the Commissioner has virtually no ability to properly investigate complainants of wrongful disclosure. The only way that the *Act* provides a mechanism for such complaints is a prosecution pursuant to section 48.

The complainant then goes on to submit that this report should include a consideration of whether or not such a prosecution is warranted, and offers suggestions as to how this determination could be made, including interviews of other individuals not previously identified during the course of the investigation.

I agree with the distinctions between the powers, authorities and procedures available in the *Act* as they relate to appeals under Part III and privacy complaints under Part II. Indeed, the inadequacy of current powers in the context of privacy investigations is a problem that has been raised strongly and frequently by this Office, and formed a major component of the recommendations contained in *A Special Report to the Legislative Assembly of Ontario on the Disclosure of Personal Information by the Province of Ontario Savings Office, Ministry of Finance*, tabled in the Legislature on April 26, 2000. It is also an area of serious deficiency identified by this Office in the context of discussions which took place earlier this year regarding the government's proposed *Personal Health Information Privacy Act, 2000* (Bill 159). Should the necessary powers be given to the Commissioner in future, the conduct of privacy complainant investigations would be amended accordingly.

However, the more traditional powers associated with investigations of this nature are important for the purpose of making findings as they relate to the disclosure of personal information under section 32 of the *Act*, not, in my view, in order to assume any new role as it relates to the offence provisions under section 48.

If the complainant is of the view that an offence has been committed by the Police, the process for laying an information to commence a prosecution is set out in Part III of the *Provincial Offences Act*.

SUMMARY OF CONCLUSIONS:

The personal information at issue is the personal information of the complainant, as defined in section 2(1) of the *Act*.

I am not persuaded that there was an improper disclosure of the complainant's personal information.

RECOMMENDATION:

That the Co-ordinator for the Police send a notice to all Police staff, reminding them of the importance of ensuring that any disclosure of personal information is in accordance with section 32 of the *Act*

The Police should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation by **May 31, 2001**.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ April 9, 2001