
PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. PC-020024-1

Ministry of Public Safety and Security

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MEDIATOR: **Susan Woolway**

INSTITUTION: **Ministry of Public Safety and Security**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (the IPC) received a privacy complaint under the *Freedom of Information and Protection of Privacy Act* (the Act) involving the Ministry of Public Safety and Security (the Ministry).

The complainant was concerned about the way the Ministry handled his confidential Crown disclosure documents (disclosure documents) during the periods of time when he was incarcerated at two separate institutions; a particular jail and a particular detention centre. The complainant explained that he represents himself with regard to his court matters and as a consequence has a right to be personally provided with a copy of his disclosure documents.

This complaint against the Ministry involves two specific incidents.

Incident #1

In the first incident, the complainant explained that while he was an inmate at a particular jail, an Assistant Crown Attorney forwarded the complainant's disclosure documents to the jail, under cover of a letter dated December 31, 2001. The letter was addressed to the Superintendent of the jail and copied to the complainant. In the letter, the Assistant Crown Attorney cautioned that the documents should be kept in a secure place but made accessible to the complainant at his request. The complainant provided a copy of this letter to the IPC. On the letter there is a received notation by the jail of January 4, 2002.

The complainant advised that he subsequently met with the Superintendent of the jail and was advised that the records would be kept in a safe in the duty office. The complainant indicated that on two occasions between January 4, 2002 and January 7, 2002 he had access to these records.

The complainant explained that he had a court appearance on January 7, 2002 and was released directly from court on that date. He advised that he returned the following day to the jail to retrieve his personal belongings and his disclosure documents. He obtained his personal belongings but indicated that he did not receive his disclosure documents. The complainant made a number of requests over the next few months for these records. He finally received a letter dated June 24, 2002 from the Superintendent of the jail. It stated that his disclosure documents had not been found and there was no evidence they had ever been at the jail. The complainant provided the IPC with a copy of this letter.

During the course of our investigation, the complainant informed the IPC that on January 19, 2002 he received a letter from an employee of the jail advising that he, the employee, had the complainant's disclosure documents and was keeping them in a safe place outside the jail. According to the complainant, the employee advised him that he had taken this action since the records were being circulated amongst the employees of the jail. The complainant indicated that the employee said in the letter that he would return the records to the complainant at a future time.

It should be noted that the IPC asked the complainant for a copy of this letter, however, the complainant declined to provide a copy. The complainant also declined to provide any additional information concerning this incident.

Incident #2

The second incident concerns a particular detention centre. The complainant explained that on February 20, 2002 he was in court on a certain matter and observed the Assistant Crown Attorney deliver the disclosure documents relevant to that court appearance to the Court Security Officer. The complainant advised that later that day the Court Security Officer turned the records over to staff at the detention centre where the complainant was then incarcerated.

The complainant indicated that upon his return from court to the detention centre on February 20, 2002, he saw his records, contained in a clear plastic bag, arrive at the detention centre and given to staff in the Admitting and Discharge area.

The complainant advised that he subsequently made repeated requests, written and verbal, to senior management at the detention centre for access to his records. He explained that a staff member eventually told him that the centre had searched for the records but could not locate them. The complainant further indicated that the Deputy Superintendent of Services subsequently confirmed this.

During our investigation the complainant told the IPC that he believes the detention centre mistakenly released his records to an inmate with a last name similar to the complainant's at the time of that inmate's release. The complainant provided the name of this inmate to the IPC, which in turn passed it on to the Ministry.

As part of our investigation the IPC also spoke to the Assistant Crown Attorney involved in both incidents. With respect to the first incident, the Assistant Crown Attorney confirmed that he had

couriered the complainant's Crown disclosure records to the jail along with a covering letter and had copied the complainant on that letter. With regard to the second incident involving the detention centre, he indicated that he had given the records to the appropriate court official for safe delivery to that institution.

Ministry's response

The Ministry advised that extensive search efforts were undertaken by experienced staff at both institutions in an effort to confirm the existence and current whereabouts of the complainant's missing disclosure documents. Two record searches were conducted at each institution but the documents were not located.

Incident #1

The Ministry advised that the jail had located the December 31, 2001 letter from the Assistant Crown Attorney to the Superintendent of the jail, which makes reference to the disclosure materials. The Ministry also indicated that the Acting Superintendent of the jail reviewed the complainant's offender file to determine if the file contained a Personal Property Declaration Form in relation to the complainant's release from that facility on January 7, 2002. No such document was found in the file. The Ministry also advised that it has been unable to locate any records confirming whether the complainant had possession of his disclosure materials when he was released.

During the course of the investigation, the jail produced a copy of an inmate request form dated January 3, 2002, which was submitted by the complainant to staff at the jail. It indicates that the complainant was given access to "disclosure documents" along with other court related material on January 4, 2002. Unfortunately, there is no record of whether these documents were subsequently collected from the complainant.

Incident #2

With respect to the second incident, despite the complainant's assertion that he had seen his disclosure materials arrive at the Admitting and Discharge area, the detention centre has been unable to locate any record confirming that the complainant's disclosure materials were received by that facility following his court appearance on February 20, 2002.

The Ministry indicated that as part of its investigation into this incident, it had spoken with security staff at the relevant courthouse with respect to this matter. The security book entries for February 20, 2002 were checked and did not reflect any information about the complainant's disclosure materials.

The Ministry also checked with the Ministry's Offender Classification and Transfer Section (institutional bailiffs) to ascertain whether the complainant's missing disclosure materials might have been forwarded to that office following the complainant's return to the detention center from court. The Ministry was advised that any such material would have been given to detention staff.

As indicated previously, the name of the inmate the complainant suspected had been mistakenly given his records was provided to the Ministry. In this regard the Ministry indicated that the detention centre looked into the possibility of whether this particular inmate, who was incarcerated at the detention centre at the same time as the complainant, may have mistakenly been given the complainant's disclosure materials. No evidence was found to indicate that detention staff had given the complainant's disclosure materials to this individual in error.

The Ministry did not attempt to contact this individual to determine whether he has any information with respect to this matter.

Ministry's policy and procedures concerning disclosure documents

The Ministry explained that "offender disclosure materials are usually delivered to correctional facilities by an offender's lawyer, friends or family members. Such materials may be hand-delivered or delivered by mail or courier. In most instances, the institution will immediately identify such documents as offender disclosure materials. Occasionally, however, this circumstance will not be evident when the materials are received by the institution or directly by the offender."

The Ministry procedures for the management and control of identified offender disclosure materials are set out in the Ministry *Disclosure Materials Received by Inmates* and *Unrepresented Accused Inmates* policies. The Ministry provided the IPC with a copy of these policies. The *Disclosure Materials Received by Inmates* policy states, in part:

Policy

Inmates shall be permitted to examine disclosure materials in a manner that is controlled but provides full and private access to these materials.

...

Procedures

The superintendent or designate allocates one or more locations in the facility where inmates can be provided controlled but private access to disclosure materials. Suitable locations may include, but are not limited to:

- a) the lawyer visiting room;
- b) the inmate visiting room when visits are not in progress;
- c) a program room; or
- d) in exceptional circumstances (e.g., where space is at a premium or other suitable locations are unavailable), an infirmary or segregation cell.

Given that disclosure materials might contain sensitive information whose pre-trial dissemination could seriously jeopardize the safety and privacy of individuals

and the administration of Justice (e.g., the statement of a child complainant in a sexual assault case, witness statements, information relating to victims, etc.), sufficient controls must be implemented to prevent the materials from being read by any other inmate or third party. For the same reasons, disclosure materials are not to be taken into any living unit and will be stored either with the inmate's property or in an alternative secure location designated by the superintendent (e.g., a locked filing cabinet with limited access) when not in use.

While the Ministry acknowledged that the policies do not specifically require the use of an "Offender Disclosure Materials Register" to record the dates and times when an offender has access to his/her disclosure materials, it indicated that some correctional institutions have chosen to use such a document for control purposes. The Ministry provided the IPC with a sample copy of the "Offender Disclosure Materials Register".

The Ministry went on to say the following:

With specific reference to the [jail], I understand that in accordance with the *Disclosure Materials Received by Inmates and Unrepresented Accused Inmates* policies, the professional visits room is used by offenders requiring the opportunity to review their disclosure materials. Disclosure materials are securely stored in the institution's Admitting and Discharge Property Room. The door to the Property Room is kept locked and must be opened with a key by responsible staff.

Following an assessment of the circumstances of the current complaint, the Superintendent of the [jail] decided to implement the administrative use of an Offender Disclosure Materials Register to document the use and movement of offender disclosure materials within the facility.

On April 1, 2003, the new process for the management of disclosure materials received by the [jail] inmates was implemented. The new procedure specifies that disclosure materials are to be recorded as received on an Inmate Personal Property Declaration Form and that an Offender Disclosure Materials Register is to be used to record the dates and times when such materials are accessed by the offender.

The Ministry provided the IPC with a copy of the April 1, 2003 memorandum to all staff at the jail on the new procedure to be followed with regard to Disclosure Materials Received By Inmates. The Ministry also provided the IPC with a copy of the related Offender Disclosure Materials Register.

With regard to the second institution, that being the detention centre, the Ministry advised the following:

... all identifiable offender disclosure materials are kept in a locked filing cabinet with only two keys available, one is held by the Shift Supervisor and one kept in the key vault and must be signed out and in by the Correctional Officer assigned

that post. Offender disclosure materials are considered to be the personal property of inmates. Offenders must request to review their disclosure material via a written inmate request form and are then taken to the disclosure room and given the opportunity to review their disclosure materials.

After reviewing the disclosure materials, the offender then signs an inmate request form indicating that he/she has been given the opportunity to view the disclosure material. The inmate request form is also signed by the Correctional Officer responsible for the area. The completed inmate request is forwarded to inmate records and placed on the offender's file. In addition, there is a disclosure log book where the staff record the date, the offender's name and time in and out of the area.

The Ministry also indicated that the Management and Operational Support Branch of the Ministry is currently reviewing the *Disclosure Materials Received by Inmates* and *Unrepresented Accused Inmates* policies to ascertain if they continue to adequately address the Ministry's responsibilities for the safeguarding of offender disclosure materials. The review will include consideration of the appropriateness of requiring the use of an Offender Disclosure Materials Register at each correctional institution.

DISCUSSION:

The following issues were identified as arising from the investigation:

1. Is the information "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,

- (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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,

- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (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;”

The records that are the subject of this privacy complaint are two separate sets of disclosure materials that relate to criminal charges laid against the complainant by the Crown. I find that the information contained within these records is clearly personal information as defined in one or more of the subsections of section 2(1) of the *Act* as set out above. The Ministry does not dispute this finding.

2. Was the disclosure of the “personal information” in accordance with section 42 of the *Act*.

Section 42 of the *Act* sets out a number of circumstances under which an institution may disclose personal information.

With respect to the first incident, there is undisputed evidence that the complainant’s disclosure materials were received by the jail. The difficulty in the investigation was that I was unable to substantiate the complainant’s claim that the Ministry had disclosed his personal information to anyone other than himself. Although the complainant claims his personal information is now in the personal custody of an employee of the Ministry, the complainant refused to provide this office with the name of this employee or with any other additional evidence so that this claim could be investigated further. As a result, I am unable to conclude there has been any improper disclosure by the Ministry of the complainant’s personal information.

Similarly with respect to the second incident, I have been unable to substantiate the complainant’s claim that the detention centre inappropriately disclosed his personal information. As outlined above the complainant claims he witnessed his disclosure records arrive at the detention centre. However after investigating the matter, the Ministry was unable to locate any record or other evidence that the detention centre came into custody of the complainant’s personal information. Even if I were to accept that the records did arrive at the detention centre, I am unable to determine at this time, whether these records were subsequently inappropriately disclosed to anyone. One reason for this is that the Ministry has not contacted or attempted to contact the inmate whom the complainant suspects was given his personal information. Accordingly, I will be making a recommendation that the Ministry make reasonable efforts to contact this individual so as to investigate the matter further.

3. Was the “ personal information” protected in accordance with section 4 of O. Reg. 460 implemented under the Act?

It will be useful to set out section 4 of O. Reg. 460 in full. It reads:

4. (1) Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected.

(2) Every head shall ensure that only those individuals who need a record for the performance of their duties shall have access to it.

(3) Every head shall ensure that reasonable measures to protect the records in his or her institution from inadvertent destruction or damage are defined, documented and put in place, taking into account the nature of the records to be protected.

With respect to the first incident, the December 31, 2002 letter from the Assistant Crown Attorney to the jail is undisputed evidence that the jail came into possession of the complainant's disclosure materials. However, the jail has no record of what happened to those records after they came into the institution's custody. The only possible reference to these records exists in the inmate request log, which indicates that the complainant was given access to “disclosure items” on January 4, 2002 at the jail. There is no further notation.

This entry raises a number of questions which to date, remain unanswered. Are the “disclosure items” noted on the inmate request log the confidential documents sent to the jail by the Assistant Crown Attorney? Did the complainant keep the records after viewing them or did institution staff retrieve them? If so, where are the records now?

As for the second incident involving the detention center, the unanswered questions are similar. Did the institution come into possession of the records as the complainant claims? If so, what happened to the records?

Unfortunately neither institution can explain or confirm what happened to the disclosure records or where they are now. The fact that these questions are outstanding and that neither institution can provide the answers leads to the conclusion that the complainant's personal information was not protected in accordance with section 4 of O. Reg. 460.

It is commendable, however, that as a result of this complaint and subsequent investigation the first institution (the jail), on its own initiative has introduced a process that will now internally trace an offender's disclosure materials. The second institution (the detention centre) also appears to have a process in place aimed at tracking such disclosure materials, although it is not clear whether or how it tracks the receipt of such documentation.

While the Ministry policies outline the procedures to be followed to ensure that inmates have access to their disclosure materials, the policies do not address the procedures which are to be followed with respect to the receipt of the records by the institution and the subsequent tracking

of such records within the institution up until the time the inmate is discharged. Accordingly, I will be making a recommendation that the Ministry amend its policies in this regard.

CONCLUSIONS:

I have reached the following conclusions based on the results of my investigation:

1. The information in question is personal information as defined in section 2(1) of the *Act*.
2. There is insufficient evidence to conclude that there has been any improper disclosure by the Ministry of the complainant's personal information with respect to either the first or second incident.
3. The complainant's personal information was not protected in accordance with section 4 of O. Reg. 460.

RECOMMENDATIONS:

1. With respect to the second incident, I recommend that the Ministry make all reasonable efforts to contact the individual whose name was provided to the Ministry during the course of this investigation to determine whether or not this individual received the complainant's disclosure materials and if so, to take appropriate steps to retrieve these documents.
2. I recommend that the Ministry complete reviewing the *Disclosure Materials Received by Inmates* and *Unrepresented Accused Inmates* policies to ascertain if they continue to adequately address the Ministry's responsibilities for the safeguarding of offender disclosure materials.
3. I recommend that the Ministry make amendments to the *Disclosure Materials Received by Inmates* and *Unrepresented Accused Inmates* policy to require documentation and sign-off by both a staff member and the inmate on the following:
 - (a) the initial receipt of an inmate's disclosure materials by the institution;
 - (b) each time the inmate accesses and subsequently returns his/her disclosure materials while in custody; and
 - (c) the return of the disclosure material to the inmate at the time of discharge.
4. I recommend that the Ministry ensure that the amended policy be implemented in all of its correctional facilities and that all relevant staff are notified and made aware of this policy.

The Ministry should provide the IPC with proof of compliance with the above recommendations as follows:

1. Recommendation #1 by **July 2, 2003**;
2. Recommendation #2, #3 and #4 by **September 11, 2003**.

June 11, 2003

Susan Woolway, Mediator per:
Irena Pascoe, Team Leader, Mediaton
(Provincial)