



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. PC-050014-1

Ministry of Children and Youth Services



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INVESTIGATOR: **Mark Ratner**

INSTITUTION: **Ministry of Children and Youth Services**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (IPC) received a complaint under the *Freedom of Information and Protection of Privacy Act* (the *Act*) regarding the Ministry of Children and Youth Services (the Ministry). The complainant is concerned that the Ministry inappropriately disclosed her personal information.

Summary of Events

In May 2004, the complainant wrote a letter that was addressed to the provincial Minister of Children and Youth Services for Ontario (the letter). In the letter, the complainant raised concerns about how she had been treated by staff working at a named Children's Aid Society (CAS). The letter also implied that the complainant may have a complaint pending in the internal CAS complaints process.

Upon receipt by staff in the Minister's Correspondence Unit, the letter was forwarded to a staff member working in one of the Ministry's Regional Offices. Subsequently, a Program Supervisor with the Regional Office faxed the letter in question to the CAS. (The complainant realized that the letter had been faxed to the CAS when she noticed the document while reviewing her child's CAS file).

The subject-matter of this privacy complaint is the disclosure of personal information by the Ministry when it faxed the complainant's letter to the CAS. The complainant is concerned that this constitutes an inappropriate disclosure of her personal information in contravention of the *Act*.

DISCUSSION:

The following issues were identified as arising from the investigation:

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,

...

- (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 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,

...

- (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;

....

A copy of the letter was provided to this office by the complainant. I have reviewed the letter and note that it contains the complainant’s name, her address, as well as an extensive description of events involving the complainant and the named CAS.

I am satisfied that the information contained in the letter clearly meets the definition of “personal information” under the *Act*. The personal information relates to the complainant and other identifiable individuals.

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

In the Privacy Complaint form that was provided to this office, the complainant asserted that the Ministry faxed the entire content of her letter to the CAS without her consent. She maintained that because the CAS in question is a separate entity from the Ministry, the disclosure was unauthorized.

In response to the complaint, the Ministry acknowledged that the letter was disclosed to the CAS. However, the Ministry’s position is that the disclosure was permissible, and in accordance with the provisions of the *Act*.

As an institution under the *Act*, the Ministry is subject to the collection, use and disclosure rules that apply to personal information set out in Part III of the *Act*. With respect to the disclosure of personal information, the *Act* establishes a general prohibition on the disclosure of personal information, but states that there are certain exceptional circumstances where such information may be disclosed.

The general prohibition, as well as the statutory exceptions, are set out in section 42 of the *Act*, which states, in part:

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;

...

- (d) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;

....

The Ministry states that its disclosure of the letter to the CAS was in accordance with both sections 42(c) and 42(e) of the *Act*. I will address each provision below.

Section 42(e)

With respect to section 42(e), this provision allows an institution to disclose personal information where it can show that the disclosure is required for the purpose of complying with some other statute. The Ministry maintained that the disclosure was necessary in order to comply with section 72 of the *Child and Family Services Act* (CFSA), which mandates that any person having knowledge that a child is at risk of abuse or neglect must immediately report that knowledge, and the information upon which it is based, to a CAS.

Section 72 of the CFSA states, in part:

(1) Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall forthwith report the suspicion and the information on which it is based to a society:

...

2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,

...

ii. failure to adequately care for, provide for, supervise or protect the child, or

iii. pattern of neglect in caring for, providing for, supervising or protecting the child.

....

In support of its position, the Ministry states that the contents of the letter were sufficient to trigger the application of the CFSA disclosure provisions set out above.

The Ministry has provided me with an excerpted portion of its correspondence guidelines, which provide the following directions to the Correspondence Unit:

When a letter is received containing an allegation of child abuse or neglect, the first Correspondence Officer to read the letter is responsible for following the procedures set out in the CFSA for reporting suspected abuse. He or she must immediately contact the specific children's aid society involved and the ministry Regional Office, faxing them the letter in question. The officer should note the date as well as the name and telephone number of the children's aid society officer they spoke with, and any action taken by the ministry Regional Office as a "Comment" in CCM record of file.

The Ministry states therefore that the disclosure of the complainant's letter to the CAS was required for the purpose of complying with section 72 of the CFSA.

In determining whether the disclosure in question was, in fact, based on child protection concerns, and therefore required under the CFSA, I am mindful of the specific facts at issue in this case.

In this case, the letter that was disclosed to the CAS came from the Ministry's Regional Office, not directly from the Ministry's Correspondence Unit, as would be the proper procedure under the Ministry's correspondence guideline excerpted above. In addition, there does not appear to be a record, or notation on the Correspondence Unit's file indicating that this letter had been "flagged" as raising concerns that it contained evidence that a child was in need of protection.

I have also reviewed the content of the letter itself. I note that the letter can properly be described as a "letter of complaint" regarding the services provided by the CAS, and contains a description of the complainant's interaction with the CAS. In my view, the letter itself does not provide reasonable grounds to lead someone to suspect that a child is suffering from abuse or neglect. I also note that the fax cover sheet indicates that the letter was being sent to check the status of the complaint.

Based on my review of the letter as well as the fax cover sheet, and in light of the fact that the Ministry did not appear to follow its Correspondence Guidelines, I am not satisfied that the letter in question was disclosed for the purpose of complying with the disclosure provisions of the CFSA.

I therefore conclude that the disclosure to the CAS was not in accordance with section 42(e) of the *Act*.

Section 42(c)

As I have indicated above, the Ministry is also relying on section 42(c) of the *Act*, which permits institutions to disclose personal information for the purpose for which it was obtained or compiled, or for a consistent purpose.

In order for this section to apply, the Ministry must demonstrate that the letter was disclosed to the CAS for the **same** purpose for which it was collected or that it was disclosed for a purpose that was **consistent** with that original purpose.

In support of its position that the disclosure was permissible, the Ministry has stated that, upon receiving the complainant's letter, it determined that a response was required. In order to properly address the concerns raised in the letter, the Ministry explained that it needed to contact the CAS in order to determine whether the complainant had also filed an internal complaint with the CAS, and if so, at what stage the complaint was in the CAS complaint process.

The Ministry has explained that, under the CFSA, an individual that has concerns regarding the conduct of staff at a CAS is required to direct his or her complaint to the CAS itself. In cases where the individual complaining is not satisfied with response of the CAS, the Ministry can intervene in the form of a Director's Review, which is prescribed under section 68 of the CFSA, which states:

68. (1) A society shall establish a written review procedure, which shall be approved by a Director, for hearing and dealing with complaints by any person regarding services sought or received from the society, and shall make the review procedure available to any person on request.

Idem

(2) A review procedure established under subsection (1), shall include an opportunity for the person making the complaint to be heard by the society's board of directors.

Further review by Director

(3) A person who makes a complaint and is not satisfied with the response of the society's board of directors may have the matter reviewed by a Director.

In effect, the Ministry's position is that the purpose of its disclosure of the letter (to determine whether or not to take any action) was consistent with the purpose of the collection (to respond to concerns raised in the correspondence of citizens) and was therefore in accordance with section 42(c) of the *Act*.

In determining whether section 42(c) applies, it is necessary to consider the application of section 43 of the *Act*, which clarifies the meaning of the term "consistent purpose" contained in section 42(c) and 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.

This provision makes clear that a disclosure of personal information will only be considered to be a consistent purpose within the meaning of section 42(c) if it might have been reasonable for the individual in question to have expected that particular disclosure to have taken place.

In correspondence with the IPC, the complainant has disputed the Ministry's position that its disclosure of the letter constituted a "consistent purpose" under the *Act* and has stated:

I have reviewed a number of decisions from the IPC office in regard to section 42, which states that unless there is a specific disclaimer how the information will be

used, there is breach of privacy under section 43 of the Act when section 42(c) applies.

In support of this position, the complainant has made reference to a number of privacy investigation reports prepared by the IPC in the past, including I98-014P and the IPC's *Special Report to the Legislative Assembly of Ontario on the Disclosure of Personal Information by the Province of Ontario Savings Office, Ministry of Finance* (the *Special Report*).

I have reviewed the Reports cited above and agree that the presence (or absence) of a notice explaining the manner in which personal information may be disclosed has been found to be a relevant consideration in determining whether the threshold for a consistent purpose has been met in certain circumstances.

However, in my view, the facts of this privacy complaint can be distinguished from the facts of the reports cited. Both I98-014P and the *Special Report* involve situations where the government institution in question had ongoing interactions with the individuals involved. (In I98-014P, the individuals were respondents to a government survey, and in the *Special Report*, the individuals were clients of the Province of Ontario Savings Office). Implicit in the findings of those reports is the fact that the respective government institution had the ability to notify individuals regarding disclosures of personal information, but notice was either absent, or inadequate.

In contrast, this privacy complaint involves a letter sent by the complainant to the institution. Because the collection of the information took place at the time the letter was received by the institution, it would not have been possible, nor practical, to notify the sender that the letter may be subsequently disclosed for a legitimate purpose.

On the contrary, in my view, an individual writing a letter to a Minister for a government should possess an implicit understanding, at the time the letter is sent, that the Minister may contact other parties in order to provide a response. More importantly, where a letter contains allegations of impropriety, and requests that the Minister investigate, there should be an implicit understanding by the individual that the contents of the complaint (i.e., the letter in this instance) may be disclosed to the party that is the subject of the complaint. Without having been provided with the letter, the subject of the complaint would not have the opportunity to respond to allegations that may have been raised.

In my view, to arrive at any alternate conclusion would unreasonably limit the ability of government institutions to respond to letters of complaint received from members of the public.

As such, in this instance, I am satisfied that a reasonable expectation of a disclosure should have been present. In this case, the complainant wrote a letter of complaint to the Minister outlining her concerns about a CAS. Presumably, the purpose of the letter was to have the Ministry address her concerns by raising those concerns with the CAS named in the letter. In order to facilitate an adequate response, it is conceivable, and should be reasonable to expect, that the Ministry would provide the CAS with the copy of the letter of complaint.

Based on this reasoning, I am satisfied that the Ministry's disclosure of the letter to the CAS is an event that might reasonably have been expected by the complainant in accordance with section 43 of the *Act*, and is therefore a permissible disclosure in accordance with section 42(c) of the *Act*.

OTHER MATTERS

During the course of this investigation, the complainant has raised concerns regarding subsequent disclosures of her personal information by the Ministry to the named CAS. In support of this position, the complainant has provided me with a letter from the CAS indicating that there has been additional contact with the Ministry.

I have reviewed the facts relating to this second disclosure of information, and I have also had discussions with both the complainant and the Ministry regarding this second disclosure. Based upon my review, I am satisfied that this second disclosure does not violate the privacy provisions of the *Act*.

Should the complainant have any additional concerns related to the Ministry's conduct, these concerns may be brought to the attention of the IPC in writing.

CONCLUSION:

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

- The information in question qualifies as "personal information" as defined in section 2(1) of the *Act*.
- The personal information was not disclosed in accordance with section 42(e) of the *Act*.
- The personal information was disclosed in accordance with section 42(c) of the *Act*.

August 2, 2006

Mark Ratner
Investigator