



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-050045-1

Ministry of Community and Social Services



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INVESTIGATOR: **Mark Ratner**

INSTITUTION: **Ministry of Community and Social Services**

SUMMARY OF COMMISSIONER INITIATED COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (IPC) received a letter of complaint from an individual describing a new form that had been implemented by the Ministry of Community and Social Services (the Ministry). According to the individual, the form, titled "Application for Special Diet Allowance and Pregnancy Nutritional Allowance" requires that Ministry clients provide personal information to the Ministry in order to receive a special dietary allowance.

In response to the letter, the IPC initiated a privacy investigation under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The purpose of this investigation was to determine whether the Ministry's collection of the information on the form was in accordance with the provisions of the *Act*. During the course of the investigation, the IPC received letters from other members of the public expressing similar concerns about the form.

DISCUSSION:

During the course of this investigation, the Ministry provided the following information.

Pursuant to provisions contained in both the *Ontario Disability Support Program Act* and the *Ontario Works Act*, recipients of social assistance that suffer from one of a prescribed list of medical conditions are entitled to receive a monetary special dietary allowance each month. The dietary allowance, which is intended as an income supplement, is administered by the Ministry.

Prior to the Ministry's implementation of a new form in 2005, social assistance recipients were able to apply for a special dietary allowance by submitting an application to the Ministry. As part of the application process, the applicant was required to have a medical practitioner fill out the portion of the form that identified a particular diet. The practitioner would include

information regarding the diet that was required, but would not include any information relating to the client's medical diagnosis.

A new form was introduced in 2005. On this new form, applicants for a special dietary allowance were now required to have a medical practitioner complete a form that provided information relating to the applicant's medical diagnosis. Examples of conditions that would merit a special diet include: Diabetes, Cystic fibrosis, Crohn's disease and HIV/AIDS.

Once the applicant completed the form (including the portion that was completed by the medical practitioner), it was collected and retained in paper form in the client's master file, which is located in the Ontario Works office administering the client's benefits. Only authorized staff at the local Ontario Works office had access to the client's master file and the medical information contained in those files.

In response to the introduction of the new form, advocacy groups representing individuals that were special diet recipients contacted the Ministry to request that the Ministry reconsider its use of the form. The basis of this request was their claim that the form unnecessarily required the provision of confidential medical information to the Ministry.

Concurrent with the Ministry's contact with these advocacy groups, the IPC was also in contact with the Ministry regarding the issues raised in this privacy complaint.

As a result of the discussions with the advocacy groups (which took place during the course of this privacy complaint), the Ministry decided to make further revisions to the form. In October, 2006, the Ministry provided the IPC with a Special Diet Allowance form (the current form) that had been subject to further revisions.

Under the current form, medical conditions are still listed, but a number of conditions that are considered to carry "social stigmas" (such as HIV/AIDS) have been listed in the same category as other conditions, such as Crohn's Disease, Malignancy and Ostomies among others, that would require the same diet. As a result of this change, the current form no longer lists an individual's **specific** medical condition, but states that the individual in question suffers from one of a list of medical conditions.

The effect of this change is that Ministry staff that are privy to the current form would no longer know, for example, that the individual has been diagnosed with HIV/AIDS. Instead, Ministry staff reviewing the current form would only know that the individual in question is suffering from **one** of the following: Amyotrophic Lateral Sclerosis, Crohn's Disease, HIV/AIDS, Malignancy, Ostomies, Pancreatic Insufficiency, Short Bowel Syndrome, or Ulcerative Colitis.

Because the current form is the form that is presently in use, this Privacy Complaint Report will address whether the Ministry's collection of personal information contained on the current form is in accordance with the provisions of the *Act*.

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,

...

(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].

....

I have reviewed copies of the form that have been provided to the IPC. I note that required fields on the current form include:

- the applicant’s name;
- the applicant’s date of birth;
- the applicant’s member number; and
- medical information about the applicant (filled out by an approved health professional).

Based on the definition of “personal information” contained in the *Act*, I am satisfied that the information that is required to be provided under the form qualifies as the applicant’s “personal information”. The Ministry concurs with this position.

Is the collection of the “personal information” in accordance with section 38(2) of the Act?

Section 38(2) of the *Act* states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

In order for an institution to demonstrate that a given information collection practice is permissible, it must show that at least one of the criteria set out in section 38(2) applies to that practice.

In this case, the branch of section 38(2) that would most likely apply to make the collection in question permissible is the branch that permits the collection of personal information that is necessary to the proper administration of a lawfully-authorized activity.

In support of its position that the collection is permissible, the Ministry has cited provisions included in the Regulations made under both the *Ontario Disability Support Program Act* (the *ODSPA*) as well as the *Ontario Works Act* (the *OWA*).

Section 15(1) of the *OWA* states:

An application for basic financial assistance shall be made in the prescribed manner and shall contain the prescribed information.

In addition, section 36(2) of Ontario Regulation 134/98, made pursuant to the *OWA* states:

An administrator may require that a member of a benefit unit who is receiving or is applying to receive an amount for a special diet because of a medical condition ... provide information respecting his or her requirement for a special diet because of a medical condition.

Section 41(1)4 of Ontario Regulation 134/98 states:

For the month in which an approved health professional confirms that a member of the benefit unit requires a special diet because of a medical condition set out in Schedule 1 to Ontario Regulation 564/05 (Prescribed Policy Statements) made under the Act and **specifies the medical** condition and for each succeeding month, up to and including the month in which the administrator requires reconfirmation of the requirement for a special diet, an amount that is the lesser of, for each member of the benefit unit ... [emphasis added].

In addition, Ontario Regulation 564/05, made pursuant to the *OWA* sets out a list of medical conditions requiring special diets and establishes a “monthly amount” of income assistance that corresponds to each medical condition. The *ODSPA* and the Regulation made under it also contain analogous provisions relating to *ODSPA* benefits.

I have carefully reviewed the applicable provisions outlined above. I note that income assistance payments for individuals that require special diets are lawfully authorized under both the *OWA* and the *ODSPA*. Further, I note that under the Regulations to these *Acts*, medical professionals are required to specify the particular medical condition affecting a client in order to allow the administrator to properly process the application. I am therefore satisfied that the collection of personal information is “necessary to the proper administration of a lawfully authorized activity,” and is therefore in accordance with section 38(2) of the *Act*.

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 collection of personal information is in accordance with section 38(2) of the *Act*.

OTHER MATTERS

During the course of the privacy investigation, I received many letters from individuals that are special diet recipients expressing objections to the Special Diet Allowance form. I note that these letters were received prior to the recent changes.

While I understand the sentiments underlying the concerns that have been raised, I have reached the conclusion that the Ministry's collection of personal information is permissible under the *Act*. Furthermore, I note the Ministry has stated that once collected, all Special Diet forms (along with all Ministry client file information) are stored in locked filing cabinets and may only be accessed by authorized staff.

I would like to commend the Ministry for being proactive in addressing the privacy concerns that have been raised by making changes to the form. I would also like to note that as soon as the current form received final approval, it was provided to the IPC along with relevant supporting documentation. In my view, by grouping medical conditions together, the current form represents an improvement over the form that was introduced in 2005.

Original Signed By: _____

Mark Ratner
Investigator

January 22, 2007 _____