



INVESTIGATION REPORT
INVESTIGATION I94-101P
MINISTRY OF HOUSING
April 4, 1995

INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Housing (the Ministry).

The complainant, an employee of the Ministry, was advised in a meeting with the director of the branch (the Director) and the manager of the section where she was employed, that she was being suspended for 20 days pending an investigation. According to the complainant, once she had left the office, the Director called a branch meeting, with the manager, and disclosed to the branch staff that she had been suspended.

The complainant was concerned that this disclosure of her personal information was not in compliance with the 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? If yes,

(B) Was the disclosure of the complainant's personal information to her co-workers in compliance with section 42 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?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

(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 information in question was the complainant's name together with the fact that the complainant had been suspended from employment.

It is our view that this information 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 personal information as defined in section 2(1) of the Act.

Issue B: Was the disclosure of the complainant's personal information to her co-workers in compliance with section 42 of the Act?

Under the Act, personal information cannot be disclosed except in the specific circumstances outlined in section 42 of the Act.

The complainant maintained that it was not necessary for the Director to disclose to branch staff that she had been suspended. The complainant stated that, as an alternative, the Director could have communicated that she would be away from the office for 20 days. The complainant stated that the issues surrounding the suspension were private issues which did not involve the branch staff. The complainant was of the view that the word "suspension" implied a disciplinary leave and, thus, should not have been communicated.

The Ministry clarified that the disclosure of the complainant's personal information was not to all staff in the branch but to those staff in the section where the complainant was employed (her co-workers).

The Ministry has relied upon section 42(d) of the Act as its authority to disclose the personal information. Section 42(d) states:

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

(d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

The Ministry advised us that one of its functions is to protect the security of its information and property. The Ministry stated that it is its normal business practice (and that of other ministries), when someone leaves for reasons such as contract termination or suspension, for appropriate precautions to be taken in limiting potential access. In this case, the complainant's access to the computer service (LAN) was removed, as was her access to the building and to the general office.

The Ministry submitted that it was its view that, in cases where suspensions pending investigations are required, where there may be a reasonable basis for security concerns, these concerns should in some way be communicated to the employee's co-workers, in order for them to perform their duties and properly discharge the functions of the Ministry.

The Ministry stated that it is management's right to remove an employee from the workplace for a period of time in accordance with the Public Service Act, when it has been determined that an investigation should be conducted.

The Ministry advised that, as investigations can include the review of files and other records, it is common practice to require that the employee not return to the workplace so that the integrity of those records is preserved for the purposes of the investigation. It stated that in this case, the nature of the work performed by the complainant entitled her access to a wealth of personal, confidential personnel information and that it would have been inappropriate for her to continue to have had access to this information while under active investigation. The Ministry stated that the complainant also had numerous clients within the Ministry, therefore, her co-workers needed to know that she would not be at work for a particular duration of time because of a suspension.

The Ministry maintained that the complainant's co-workers would not have been in a position to take adequate precautions in respect of their own security and in particular, the security of Ministry information, if they had been told, without further explanation, that an employee would not be returning to work for 20 days. If they did not disclose that the complainant had been suspended, it would have been necessary to tell the complainant's co-workers that she was not entitled to have access, during a 20 day period, to the section's premises, information or computer services (LAN), and that the Manager should be notified if the complainant had requested such access. The Ministry stated that these facts could have led co-workers to conclude that the complainant had been suspended.

The Ministry maintained that, having examined the alternatives, the announcement of the complainant's suspension to her immediate co-workers was an effective means of conveying to them the information they required in order to enable them to perform their duties and to discharge the Ministry's functions (i.e., to protect the security of Ministry information and property). The Ministry stated that, since this was the case, the disclosure of the complainant's suspension to her co-workers, was authorized under section 42(d) of the Act.

In discussions with the complainant, she stated that it was her view that the Ministry did not have a reasonable basis for security concerns. She stated that the reasons for her suspension would not have been sufficient to cause the Ministry to be concerned about the security of its information and property.

The complainant further stated in her comments on our draft report, that there had never been any security concerns about her nor was "security" the reason for her suspension. She also stated that it was her view that telling her co-workers that she had been suspended did not imply that she should be denied access to the premises, and that the Director "could have taken appropriate action and disclosed that [the complainant] should not be on the premises without using the word "suspension" which has a disciplinary connotation [sic] and is a private matter." The complainant

further stated that the "Ministry had every right to tell the co-workers that [she] would not be around for 20 days, but they did not have the right to say that [she] was "suspended"".

However, it is our view that it is not within our jurisdiction to determine whether the Ministry's reasons for suspending the complainant were valid, or whether those reasons were sufficient to cause the Ministry to have concerns about the security of its information and property. The Ministry, under the Public Service Act, had the authority to suspend the complainant pending an investigation. The complainant was "suspended" and this was the term used by the Ministry to state the reason for her absence.

It is our view that one of the Ministry's functions was to ensure that information and property maintained within its custody and control was properly secured. The Ministry stated that in order to maintain the security of its information and property, it was necessary to advise the complainant's co-workers that she had been suspended. The Ministry further stated that this was a way of conveying to them that the complainant was not to have access to the section's premises, information or computer service (LAN), and that the manager should be notified if the complainant requested such access.

We agree with the Ministry that if it had concerns for the security of its property and information, it would have been necessary to communicate those concerns to the co-workers and that it would not have been sufficient to simply tell them that the complainant would not be returning to work for 20 days. They would not have been aware that precautions should be taken in limiting the complainant's access to the information and property in the section. In our view, disclosing to her co-workers that the complainant had been suspended had the same result as communicating to them that she was not to have access to the section's premises, information or computer service (LAN).

In our view, the Ministry has demonstrated that its disclosure that the complainant had been suspended was to employees who needed to know this in the performance of their duties, and the disclosure was necessary and proper in the discharge of the Ministry's function of ensuring the security of its information and property. Therefore, the Ministry's disclosure of the complainant's suspension to her co-workers was in compliance with section 42(d) of the Act.

Conclusion: The disclosure of the complainant's personal information to her co-workers was in compliance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

The information in question was personal information as defined in section 2(1) of the Act.

The disclosure of the complainant's personal information to her co-workers was in compliance with section 42 of the Act.

Original signed by: Susan Anthistle, Compliance Review Officer
April 4, 1995