
PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT PC-010015-1

MINISTRY OF FINANCE

November 6, 2001

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. **PC-010015-1**

MEDIATOR: **Lois Friedman**

INSTITUTION: **Ministry of Finance**

SUMMARY OF COMPLAINT:

An individual (the “complainant”) wrote to the Office of the Information and Privacy Commissioner (the “IPC”), complaining that the Ministry of Finance (the “Ministry”) had breached his privacy by disclosing personal information about him to an employment agency. The complainant alleged that the Ministry had disclosed his personal information contrary to the *Freedom of Information and Protection of Privacy Act* (the *Act*).

The complainant worked at the Ministry, on a temporary work assignment that had been arranged through an employment agency. Prior to the conclusion of the assignment, the Ministry dismissed the complainant, expressing dissatisfaction with his performance. The complainant then sued the employment agency and the Ministry for wrongful dismissal. In defending against the complainant’s wrongful dismissal action, the employment agency and the Ministry filed Statements of Defence. In the Statement of Defence filed by the employment agency, the employment agency described an incident involving the Ministry and the complainant:

... he was informed that his assignment was ended... Subsequent to this, the complainant made threatening comments requiring security involvement and removal from the client's premises.

The complainant asserts that the employment agency could not have known about the incident, unless the Ministry had informed the employment agency. The complainant accepts that the Ministry should be able to provide feedback to the employment agency on an individual’s job performance. However, he contends that this incident did not relate to his job performance and that the Ministry acted contrary to the *Act*, by disclosing the incident to the employment agency. The complainant also disagrees with the Ministry’s characterization of his comments as threatening and is of the view that the Ministry overreacted by calling security staff.

THE DISCLOSURE:

During the investigation, the Ministry advised the mediator that the disclosure to the employment agency had been a verbal disclosure. The Ministry was unable to provide extensive details regarding the disclosure and advised the mediator that it has no records relating to the incident. The Ministry did indicate that the Ministry employee, who had dismissed the complainant and summoned security staff, may have spoken to someone at the employment agency, a day or so after the incident occurred.

During the investigation, the Ministry and the complainant were asked whether the complainant had signed a consent form authorizing the release of information between the Ministry and the employment agency. The Ministry did not address this issue and the complainant could not recall.

DISCUSSION:

The following issues were identified as arising from the investigation:

(A) Does section 65(6) of the Act apply, thereby removing the information disclosed from the scope of the Act?

Section 65(6) of the *Act* deals with employment and labour-related information and has the effect of removing employment and labour-related information from the scope of the *Act*. Section 65(6) is set out below:

65(6) Subject to subsection (7), this *Act* does not apply to *records* collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labor relations or to the employment of a person by the institution.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

[Emphasis added]

Section 65(6) excludes *records* from the scope of the *Act*. If section 65(6) applies to a specific record and none of the exceptions listed in section 65(7) are present, then the record is excluded from the scope of the *Act* and not subject to the jurisdiction of the Information and Privacy Commissioner.

The Ministry submits that section 65(6) does not apply to this disclosure, as no records were disclosed to the employment agency. As noted previously, the Ministry also takes the position that it possesses no records in relation to this incident.

Section 2(1) defines a *record* as “any record of information however recorded, whether in printed form, on film, by electronic means or otherwise”. (The definition of record also contains a list of items which are included within its meaning.)

The complainant submits that section 65(6) should not apply, as the information is not employment-related. The complainant is of the view that the information disclosed does not refer to his performance of his work assignment, but rather to an exchange that occurred after the Ministry had already dismissed him.

In my view, the question of whether the disclosed information is employment-related is irrelevant in the circumstances of this investigation. It is my conclusion that section 65(6) cannot apply in this case, as no *record* was disclosed. Given that section 65(6) does not apply, the disclosure must now be analyzed under the *Act*.

(B) Was the disclosure permissible under section 42 of the *Act*?

Section 42 governs disclosure of personal information by an institution. The opening words of section 42 state that “[a]n institution shall not disclose personal information in its custody or under its control except...” The circumstances in which an institution is permitted to disclose personal information are set out in sections 42(a) to (n).

Personal information is defined at section 2(1) of the *Act*. Section 2(1) states that *personal information* means “recorded information about an identifiable individual”. (The definition of personal information also contains a list of items which are included within its meaning.)

Under section 37 of the *Act*, the term *personal information* is expanded to include *non-recorded* information, however that is solely for the purposes of section 38 and 39, which deal with the collection of personal information. The expanded definition found in section 37, does not apply to the disclosure provisions under section 42. Accordingly, in order for a disclosure to be subject to the *Act*, it must involve disclosure of *recorded* information about an identifiable individual.

The facts of this case do not involve disclosure of *recorded* information. It is my conclusion that the information disclosed was *not* personal information under section 2 of the *Act* and that the verbal disclosure made by the Ministry to the employment agency is consequently *not* subject to the disclosure provisions contained in section 42 of the *Act*.

CONCLUSION:

- (A) Section 65(6) does not apply to the disclosure. Therefore, the disclosure must be analyzed under the *Act*.
- (B) The information disclosed was not personal information under section 2 of the *Act*. Therefore, the information disclosed was not subject to section 42 of the *Act*.

Lois Friedman
Mediator

November 6, 2001