



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

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# INVESTIGATION REPORT

## INVESTIGATION I93-016M

### A MUNICIPALITY

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## **INTRODUCTION**

### **Background of the Complaint**

This investigation was initiated as a result of a complaint concerning a named Municipality (the Municipality).

The complainant, an employee of the Municipality's licensing commission, was a Workers' Compensation Board (WCB) claimant, and a recipient of long-term disability (LTD) benefits from the Municipality. Her complaint was that embarrassing medical information about herself, contained in a WCB Decision Review Specialist's Report (the Report) had been disclosed by the Municipality to a named insurance company and to non-medical staff at the licensing commission, contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The complainant advised that she had not given her consent for disclosure of the Report to the insurance company or to licensing commission staff. The complainant maintained that when she had worked for the licensing commission, she had seen similar reports herself, and was aware that no medical personnel were employed by the licensing commission. In the complainant's view, licensing commission staff should not have had access to her sensitive medical information.

The complainant also contended that the Report was improperly disclosed at an arbitration hearing arising from grievances she had filed against the Municipality, relating to WCB payments she had received from the Municipality, pending the Report's decision.

### **Issues Arising from the Investigation**

The following issues were identified as arising from the investigation:

- (A) Was the information contained in the Report "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the Municipality disclose the personal information to the licensing commission, in accordance with section 32 of the Act?
- (C) Did the Municipality disclose the personal information to the insurance company, in accordance with section 32 of the Act?
- (D) Did the Municipality disclose the personal information at the arbitration hearing in accordance with section 32 of the Act?

## **RESULTS OF THE INVESTIGATION**

**Issue A: Was the information contained in the Report "personal information" as defined in section 2(1) of the Act?**

Section 2(1) of the Act defines "personal information", in part, as:

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, (emphasis added)
  
- (h) the individual's name if 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;

We reviewed the Report and found that it contained the complainant's medical history. We also noted that it contained information concerning the WCB advances paid to the complainant by the Municipality, and references from physicians and other specialists related to workplace accommodation to address the complainant's physical limitations.

In our view, the information in the Report met the requirements of paragraphs (b) and (h) of the definition of "personal information" in section 2(1) of the Act.

**Conclusion:** The information contained in the Report was personal information, as defined in section 2(1) of the Act.

**Issue B: Did the Municipality disclose the personal information to the licensing commission, in accordance with section 32 of the Act?**

The complainant's concern centred on the disclosure of the Report to non-medical staff at the licensing commission. The complainant felt that the licensing commission only needed to know whether her WCB claim had been approved or denied.

Under the Act, an institution shall not disclose personal information in its custody or under its control, except in the circumstances outlined in section 32.

The Ministry stated that its treasury department had disclosed the Report to the licensing commission, which functions as a department of the Municipality in its relationship to other departments. It was thus the Municipality's view that the disclosure had been internal to the Municipality, and was in accordance with section 32(d) of the Act, i.e., disclosure to an officer or employee of the institution who needed the record in the performance of his or her duties.

However, for the purposes of the Act, the licensing commission is considered to be a separate institution from the Municipality. Therefore, we examined the application of section 32(c) of the Act to the Municipality's disclosure to the licensing commission. This section states:

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;

The Municipality advised that its treasury department had obtained the Report from the WCB for administrative purposes including computer updating of claims information and for distribution to the affected "department", in this case, the licensing commission. The licensing commission was responsible for WCB claims management which included payroll recording and the payments of benefits. The Municipality stated that the Accounting Supervisor and the Payroll Clerk had access to the Report in order to perform their administrative duties related to claims management. The Report was also disclosed to the Director of Administration in order to respond to questions directed to him from the complainant.

The Municipality also advised that such WCB reports generally included information related to "prognosis, re-training and rehabilitation, workplace accommodation requirements and any other factors which are relevant". The affected "department" assesses a report's decision to help determine whether an appeal should be filed with the WCB and to respond to the issues addressed in the report, such as workplace accommodation etc.

It is our view that in this case, one of the purposes for which the Municipality (the treasury department) had collected the Report was for claims administration including computer updating of WCB claims information. The Municipality then disclosed the Report to the staff of the affected "department" -- the licensing commission, for WCB claims management which included payroll recording, payments of benefits and assessment purposes.

Section 33 of the Act states:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure.

However, when personal information has been collected indirectly, as in the circumstances of this case, a "consistent purpose" is one which is "reasonably compatible" with the purpose for which the information was obtained or collected. In our view the Municipality disclosed the Report to the licensing commission for purposes which were reasonably compatible with the purpose for which the Municipality had obtained it. Therefore, the Municipality's disclosure to the licensing commission was for a consistent purpose, in accordance with section 32(c) of the Act.

**Conclusion:** The Municipality's disclosure of the complainant's personal information to the licensing commission was in accordance with section 32 of the Act.

**Issue C: Did the Municipality disclose the personal information to the insurance company, in accordance with section 32 of the Act?**

The Report contained medical information about the complainant as well as details such as the amount of WCB advances paid to the complainant. The complainant contended that the Municipality had no right to disclose the medical information contained in the Report to the insurance company without her consent. The complainant explained that forms sent to her by the insurance company often contain a waiver concerning disclosure. She routinely crosses out such waivers, and had not consented to any disclosure to the insurance company. The complainant contended that if medical information had been required by the insurance company, it could have been obtained directly from herself, or the WCB.

The Municipality stated that it had relied on section 32(c) of the Act for the disclosure of the Report to the insurance company i.e., for a consistent purpose.

The Municipality acknowledged that it did not have the complainant's specific consent for this disclosure. However, the Municipality advised that when a claim for Long Term Disability (LTD) is in place, as in the complainant's case, relevant WCB correspondence to the employer regarding an employee's benefits is disclosed to the insurance company for both administrative and "adjudicative" purposes. The Municipality advised that it pays the full amount of benefits, whether workers' compensation or LTD. In the case of LTD benefits, the insurance company issues benefit cheques, but sends monthly invoices for the total amount paid to each individual to the Municipality.

The Municipality stated that it has an "Administrative Services" contract with the insurance company which provides for "arms length adjudication" of long term disability claims. To appropriately grant or deny a claim is dependant on the insurance company receiving or collecting all the information necessary to make such a decision. As all claims rest on an individual's medical condition, decisions cannot be made in the absence of such information. In the circumstances where an individual suffers a work-related injury for which workers' compensation benefits are paid, and an application for LTD benefits has also been made, proper adjudication requires accurate information about the nature of the injury or illness, the prognosis, any other factors which may affect the individual's return to work, and his/her eligibility for either workers' compensation benefits or LTD benefits. An individual is not entitled to both workers' compensation benefits and LTD benefits. It is important that an individual receive the appropriate benefits since he/she may be required to participate in a WCB return to work program, when in reality they may not be able to do so and may be eligible for LTD benefits.

The Municipality also believed that the most accurate information would be obtained from the records created at the time of the injury and during the subsequent claims and adjudication processes, and the resulting Decision Review Officer's reports. These reports contain information provided by the applicant, physician(s) and other specialists. The Municipality submitted that in many cases, this information is sufficient to verify eligibility for LTD, in the event workers' compensation benefits are terminated. The Municipality stated that in adjudicating the disability claim, the insurance company may decide to arrange for examination by an independent physician in addition to considering the Report.

In the complainant's case, her workers' compensation **benefits** were terminated but she was awarded a lifelong **pension** for chronic pain by the WCB. It was determined by the insurance company that she was also entitled to full LTD benefits. The insurance company, therefore, used

the Report to determine whether the complainant was eligible for LTD benefits and the level of those benefits. The insurance company confirmed that the medical information contained in the Report was used for these purposes.

In our view, one of the purposes of the Municipality's collection of the Report would have been to use the medical information it contained to determine if workers' compensation benefits or LTD benefits were due to the complainant. The Municipality's disclosure to its insurance company of the complainant's medical information in the Report was to provide the insurance company with information so that it could determine, as per its agreement with the Municipality, the LTD benefits which were due to the complainant from the Municipality. In our view, the Municipality's disclosure of the medical information in the Report to the insurance company was for the same purpose for which the information had been collected. Therefore, the disclosure was in accordance with section 32(c) of the Act.

**Conclusion:** The Municipality's disclosure to the insurance company of the complainant's personal information contained in the Report, was in accordance with section 32 of the Act.

**Issue D: Did the Municipality disclose the personal information at the arbitration hearing in accordance with section 32 of the Act?**

The complainant contended that the Municipality had improperly disclosed the information contained in the Report at an arbitration hearing arising from grievances she had filed. She stated that the medical information in the Report was not deleted before it went to arbitration.

The Municipality originally stated that it was its view that the disclosure was in accordance with section 32(c) of the Act, i.e. that it was for a consistent purpose. Its position was that the Report was disclosed at the arbitration hearing because it contained information directly related to two of the grievances filed by the complainant.

However, the Municipality later stated that the lawyer who had represented the complainant at the arbitration hearing had had an opportunity to object to the introduction of the Report at the arbitration. We confirmed with the lawyer that this was the case.

Section 32(b) of the Act states:

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

- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

It is our view that the lawyer was acting as the complainant's agent at the arbitration hearing. It is also our view that the complainant, through her agent, had identified the Report but had not objected (again through her agent) to the disclosure of the Report and its contents. In our view, the complainant's implied consent was given to the Report's disclosure at the arbitration hearing.

The Municipality's disclosure of her personal information in the Report was, therefore, in accordance with section 32(b) of the Act.

**Conclusion:** The Municipality's disclosure of the complainant's personal information at the arbitration hearing was in accordance with section 32 of the Act.

### **Other Matters**

With respect to the security of the complainant's personal information, the Municipality has advised us that all correspondence received from the WCB related to the management of claims is stored in locked cabinets in the treasury department and in the accounting/payroll section at the licensing commission.

At the treasury department, access is restricted to staff responsible for managing the claims process. Access to the treasury department floor is controlled through a security card system. At the licensing commission, access is restricted to accounting/payroll staff; other staff may not enter this section without supervision by area staff. The section is also locked at night.

### **SUMMARY OF CONCLUSIONS**

- The information contained in the Report was personal information, as defined in section 2(1) of the Act.
- The Municipality's disclosure of the complainant's personal information to the licensing commission was in accordance with section 32 of the Act.
- The Municipality's disclosure to the insurance company of the complainant's personal information in the Report was in accordance with section 32 of the Act.
- The Municipality's disclosure of the complainant's personal information at the arbitration hearing was in accordance with section 32 of the Act.

Original signed by:  
Ann Cavoukian, Ph.D  
Assistant Commissioner

May 25, 1994  
Date

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