



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

INVESTIGATION REPORT

INVESTIGATION I95-082M

A COUNTY

May 6, 1996



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named County.

From March 1992 to June 1993, the complainant and her husband were in receipt of General Welfare Assistance (GWA) from the County. The complainant subsequently obtained employment with the County in its Social Services Department.

On August 25, 1995, the Director of the Social Services Department (the Director) called the complainant into a meeting. Also present at the meeting were the Senior Supervisor of the Social Services Department (who was substituting for the complainant's regular supervisor who was on vacation), and a Union Steward. During the meeting, the Director read aloud a letter she had written to the complainant, dated August 25, 1995, in the presence of the Senior Supervisor and the Union Steward. In the letter, the Director stated, in part, the following:

This is to confirm that you are suspended without pay effective immediately, while we complete our investigation respecting a number of significant irregularities with respect to your application for employment and your application for General Welfare Assistance.

The Director had also carbon copied this letter to the Vice-President of the complainant's union local (the Vice-President), and the County's Chief Administrative Officer (CAO).

The complainant felt that the Director had breached her privacy contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act) in reading the letter aloud in the presence of the Senior Supervisor and the Union Steward, and by copying the letter to the Vice-President and the CAO.

The complainant also stated that the County had attempted to obtain information on both her and her husband's bank accounts by using a "Consent to Disclose and Verify Information" form, dated March 23, 1992, from their closed GWA file. The complainant stated that her husband had learned of this attempted collection from their bank manager.

The complainant further stated that during a meeting with the Director in September 1995, she learned that the Director was in possession of copies of her income tax returns dating from 1989 to 1994. The complainant questioned the County's authority to collect her personal financial information from her bank and her income tax returns.

In its initial reply to the complaint, the County, through its legal counsel, responded to each of the complainant's concerns. However, it subsequently stated that by virtue of paragraph one of section 52(3) of the Act, the Information and Privacy Commissioner/Ontario no longer had jurisdiction to deal with the complaint.

On November 10, 1995, Bill 7, the Labour Relations and Employment Statute Law Amendment Act, 1995, came into force. This bill amended section 52 of the Act by adding sections 52(3) and (4). Paragraph one of section 52(3), in particular, states:

Subject to subsection (4), 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 labour relations or to the employment of a person by the institution.

The County further submitted that since the complainant's concerns "... fall directly within this exception, we respectfully submit that you should close your investigation in this matter on the basis that you no longer have any jurisdiction."

We have carefully examined the County's position. However, we are of the view that the above-noted amendment does not apply to complaints relating to events that occurred prior to the amendment coming into force on November 10, 1995.

Since the incidents complained of occurred prior to the amendment, it is our view that we may consider the issues raised in this complaint. The disclosures involving the complainant's letter of suspension occurred on August 25, 1995. And, while we do not have specific dates as to when the County allegedly collected or attempted to collect the complainant's personal financial information and income tax returns, the complainant filed her complaint with regard to these incidents in September 1995. Therefore, if the County had collected or attempted to collect this information, it would have logically done so prior to the amendment.

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 complainant's personal information disclosed in compliance with section 32 of the Act?
- (C) Was the County's collection of the complainant's personal information, in compliance with section 28(2) 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,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- ...
- (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.

Letter of Suspension

The complainant provided us with a copy of the August 25, 1995 letter from the Director. It contained her address and the fact that she had been suspended from her employment with the County without pay while the County completed its investigation of a number of "significant irregularities" regarding her applications for employment and GWA.

It is our view that the information in the complainant's August 25, 1995 letter of suspension met the requirements of paragraphs (d) and (h) of the definition of personal information in section 2(1) of the Act.

Banking and Income Tax Information

The complainant believed that the County had collected information concerning her mortgage, registered retirement savings plans, loan applications, chequing and savings accounts, and personal line of credit.

The complainant also stated that the County had collected her income tax returns. These returns would have contained at a minimum, her address, social insurance number, date of birth, marital status, financial records, and supporting documentation required by the Minister of National Revenue.

It is our view that this information would have met the requirements of paragraphs (a), (b), (c), (d) and (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 complainant's personal information disclosed in compliance with section 32 of the Act?

As previously mentioned, on August 25, 1995, the Director called the complainant into a meeting, at which the Senior Supervisor and a Union Steward were also present. During the meeting, the Director read aloud the complainant's August 25, 1995 letter of suspension, in the presence of the Senior Supervisor and the Union Steward. The Director had also carbon copied the letter to the Vice-President of the Union and the CAO.

Disclosure of Complainant's Suspension to the Senior Supervisor and CAO

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 32.

The County submitted that it had disclosed the August 25, 1995 letter to the Senior Supervisor and CAO as it was required "... for the performance of their duties and the discharge of the County's functions." The County stated that the CAO was responsible for making the final decision with respect to the suspension and/or termination of any County employee.

The County relied on section 32(d) of the Act to authorize its disclosure in this regard. Section 32(d) states that an institution shall not disclose personal information in its custody or under its control except:

if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions.

In our view, the Senior Supervisor would have needed the complainant's personal information in the performance of her duties as a management representative, namely, being aware of incidents affecting the employment status of a subordinate employee. It is also our view that since the CAO was responsible for making the final decision regarding the complainant's suspension, and since the August 25 letter dealt specifically with the complainant's suspension, the CAO also needed the complainant's personal information, in the performance of her duties.

It is also our view that disclosing this information was necessary and proper in discharging the institution's function of human resource management. Therefore, the disclosure of the complainant's personal information to the Senior Supervisor and the CAO was in compliance with section 32(d) of the Act.

Disclosure of Complainant's Suspension to Union Steward and Union Vice-President

In this regard, the County submitted the following:

The disclosure of the letter to the named Union Steward and the named Vice-President was permitted pursuant to Section 32(c) of the **Act** in that its purpose was to assert contractual rights pursuant to a Collective Agreement with a Trade Union. In order to assert those contractual rights it was necessary to provide a copy of the letter to the Trade Union representatives in their capacity as a party to the Collective Agreement.

Section 32(c) of the Act states that an institution shall not disclose personal information in its custody or under its control except ... "for the purpose for which it was obtained or compiled or for a consistent purpose."

The County further stated: "The effect of the August 25th, 1995 letter was to suspend the named complainant in order to remove her from the workplace while an investigation continued so that a decision respecting her continued employment could be made." Thus, the County compiled the information surrounding the complainant's suspension for the purpose of determining whether or not to continue her employment.

In order for the County's disclosure of the complainant's personal information to be in compliance with section 32(c) of the Act, the County had to disclose this information either for the purpose of determining whether to continue her employment, or for a purpose consistent with determining whether to continue her employment.

The County stated that it had disclosed the August 25 letter to the Union Steward and the Vice-President for the purpose of asserting its contractual right to suspend the complainant, in accordance with the collective agreement. It stated that in order to assert those contractual rights it was necessary to provide a copy of the letter to the two union representatives in their capacity as a party to the collective agreement.

While we recognize that the terms and conditions of the complainant's employment with the County were governed by a collective agreement between the County and the complainant's union, the County did not provide us with any information demonstrating that it was required to inform the union of its decision to suspend the complainant, as per the collective agreement. Therefore, we are of the view that the County did not disclose the complainant's personal information to the union officials for the same purpose for which it had compiled this information, namely, to decide whether to continue to employ the complainant.

Section 33 of the Act further 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.

Where personal information is not collected directly from the individual to whom it relates, as in this case, a consistent purpose is one which is reasonably compatible with the purpose for which it was collected. It is our view that the County's disclosure of the complainant's personal

information to the union officials was **not** reasonably compatible with the purpose for which it was compiled, and was thus **not** in compliance with section 32(c) of the Act.

We reviewed the remaining provisions of section 32 and found that none applied in these circumstances. Therefore, we are of the view that the County's disclosure of the complainant's personal information to the Union Steward and the Vice-President was not in compliance with section 32 of the Act.

In response to our draft report, the County submitted the following:

The logical consequence of your finding is that no Employer can provide a bargaining agent with information respecting a bargaining unit employee regardless of the Employer's statutory or contractual obligations to do so under the terms and conditions of a Collective Agreement.

During further discussions with the County, it stated that in the event that the complainant did not initiate a grievance regarding her suspension, the union could nevertheless do so, without the complainant's consent. Therefore, the County stated that since the union could initiate a grievance without the employee's consent, it must notify the union of any disciplinary action taken against an employee.

We also spoke with a lawyer from the complainant's union. He stated that in order to advise the union's members of their rights under the collective agreement so that they, in turn, could exercise these rights, the union must be notified of any disciplinary action taken against an employee.

While we appreciate the position held by the County and the Union, neither party was able to direct us to any provisions of either the collective agreement or the Labour Relations Act, or any other authority, in support of their views. We examined both the collective agreement and the Labour Relations Act ourselves, but failed to find anything to substantiate their positions. The complainant also responded to the draft report. She stated: "Our collective agreement clearly states that all employees must be notified of discipline before they are called in to the office for a meeting so they can pick a steward of their choice. I was not notified of why I was called in to the office and I would not have picked the named steward ..."

The clause of the collective agreement which the complainant is referring to is 9.03, which reads: "At the time formal discipline is imposed, an employee shall have the right, **upon request**, of the presence of the employee's steward. ... In the case of suspension or discharge, the Employer shall notify the employee of this right in advance of any meeting respecting same." (emphasis added)

While clause 9.03 may not provide employees with the ability to select the steward of their choice, it does provide them with the right to request the presence of the employee's steward. The logical extension of this is that the employee may also choose *not* to request the steward's presence. We are of the view that since the County did not give the complainant an opportunity to choose whether or not she wished to have a steward present at her disciplinary meeting, it did

not comply with the terms of clause 9.03. Thus, in our view, the complainant was denied the opportunity of controlling to whom the information concerning her suspension was disclosed.

Having carefully considered the positions of the County, the complainant and the union, we remain of the view that, in the particular circumstances of this case, the County's disclosure to the union representatives was not in compliance with section 32 of the Act. However, there may be other circumstances where such a disclosure would comply with the Act.

Disclosure of Complainant's Address to the Vice-President of the Union and the CAO

The August 25, 1995 letter of suspension contained the complainant's home address. Thus when the County carbon copied the Vice-President and the CAO on the letter, it disclosed this information to them. The County most likely obtained the complainant's home address for the purpose of knowing where to direct her correspondence.

We examined the provisions of section 32 of the Act and found that none applied to the County's disclosure of the complainant's home address to the Vice-President of the union and the CAO. Therefore, this disclosure was not in compliance with the Act.

Conclusions: The County disclosed the complainant's personal information concerning her suspension to the Supervisor and the CAO in compliance with section 32 of the Act.

The County's disclosure of the complainant's personal information concerning her suspension to the Union Steward and the Vice-President was not in compliance with section 32 of the Act.

The County's disclosure of the complainant's home address to the Vice-President and the CAO was not in compliance with section 32 of the Act.

Issue C: Was the County's collection of the complainant's personal information in compliance with section 28(2) of the Act?

The complainant stated that the County had attempted to obtain information on both her and her husband's bank accounts by using a "Consent to Disclose and Verify Information" form dated March 23, 1992, from their closed GWA file. The complainant objected to the County using this form, stating: "This authorization was given with the understanding it was good for 60 days, not 3 1/2 years." The County stated that the consent form in question was not time-limited, and that no representative of the County had ever suggested that it was.

Section 28(2) of the Act sets out the conditions under which personal information may be collected. It 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.

Thus, when personal information is collected in compliance with section 28(2), consent is not required.

In addition to the County collecting the complainant's banking information, the complainant also stated that the County was in possession of her income tax returns dating from 1989 to 1994.

In its initial reply to the complaint, the County explained that in early 1995, it became aware of information that made it suspect that the complainant was not eligible for the GWA which she had received in 1992 and 1993. As a consequence, the County stated that it undertook an investigation for the purpose of complying with its statutory obligations to enforce and regulate entitlement to GWA. The County stated that all information and documentation obtained during its investigation was for the purpose of enforcing section 10 of the General Welfare Assistance Act (the GWA). (See Appendix A for the text of section 10(2) of the GWA.)

Although the County submitted that all of the information collected during its investigation was to enforce the GWA, it nonetheless refused to confirm whether it had in fact, collected the complainant's banking information and income tax returns. Therefore, although we were unable to establish whether the County had actually collected this information, we examined whether the County would have had the authority to collect this information, under section 28(2) of the Act, had it done so.

The County stated:

... whatever information and documentation the County may have collected in the course of its investigation, such collection of information is expressly permitted in accordance with Section 28(2) of the *Municipal Freedom of Information and Protection of Privacy Act* in that the County is expressly authorized by the *General Welfare Assistance Act* to ensure entitlement by applicants and recipients of general welfare assistance and information was collected for the purposes of law enforcement and the proper administration of the general welfare assistance scheme as established under the *General Welfare Assistance Act*.

In order for a collection of personal information to be in compliance with section 28(2) of the Act, one of the three conditions in section 28(2) must apply. The County has relied on all three of these conditions.

We initially examined whether the County would have had the authority to collect this information under the second condition of section 28(2): "used for the purposes of law enforcement".

Section 2(1) of the Act defines "law enforcement" as follows:

"law enforcement" means,

- (a) policing,

- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The County's investigation of the alleged irregularities in the complainant's application for GWA led to the complainant being charged under the Criminal Code. Further to being charged, the complainant attended a preliminary hearing in court in February and March of 1996. Since a penalty could be imposed in these proceedings, it is our view that the County would have been engaged in "law enforcement" within the meaning of section 2(1) of the Act, had it collected the complainant's personal banking information and income tax returns.

It is thus our view that had the County collected the complainant's personal information, it would have done so in compliance with section 28(2) of the Act, as it would have been used for the purposes of law enforcement.

Since we have found that the County's collection of the complainant's personal information would have been in compliance with the second condition of section 28(2), it is not necessary for us to consider the remaining two conditions of section 28(2) of the Act.

Conclusion: While we were unable to establish whether the County had in fact collected the complainant's personal information, we determined that had the County done so, it would have done so in compliance with section 28(2) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The County disclosed the complainant's personal information concerning her suspension to the Supervisor and the CAO in compliance with section 32 of the Act.
- The County's disclosure of the complainant's personal information concerning her suspension to the Union Steward and the Vice-President was not in compliance with section 32 of the Act.
- The County's disclosure of the complainant's home address to the Vice-President and the CAO was not in compliance with section 32 of the Act.
- While we were unable to establish whether the County had in fact collected the complainant's personal information, we determined that had the County done so, it would have done so in compliance with section 28(2) of the Act.

RECOMMENDATION

We recommend that the County take steps to ensure that personal information is disclosed only in compliance with section 32 of the Act.

Within six months of receiving this report, the County should provide the Information and Privacy Commissioner with proof of compliance with the above recommendation.

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

May 6, 1996
Date

APPENDIX A

10.--(2) A welfare administrator may refuse to provide or may suspend or cancel assistance under this Act where,

- (a) the applicant or recipient is not or ceases to be entitled thereto or eligible therefore under this Act or the regulations;
- (b) the applicant or recipient fails to provide to the welfare administrator or his or her representative the information required to determine initial or continuing entitlement to or eligibility for assistance or the amount of the assistance; or
- (c) any other ground for refusal, suspension or cancellation specified in the regulations exists.