



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 I96-002M

A CITY

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April 30, 1996



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## **INTRODUCTION**

### **Background of the Complaint**

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

The complainant, a former employee of the City, stated that she had suffered a work-related injury that had caused her to be off work for approximately four weeks and that the City had asked her to have her family physician complete a “Fitness Assessment - Return to Work” form. The City, however, stated that at that time, it was unaware that the complainant’s injury was work related and its efforts were to determine if this was the case.

According to the complainant, the City was not satisfied with the information provided on this form and had asked that her doctor write a letter giving an exact medical diagnosis for her. The complainant stated that her doctor had refused to submit her “confidential medical information” but had agreed to send a letter stating that she was unable to resume her work duties due to a work related injury. The complainant stated that the City told her that this information was insufficient and stopped her pay.

The complainant stated that although she then agreed to see the City’s Occupational Health Consultant, she was asked to have another form completed, an “Attending Physician’s Statement”. The information requested on this form included a “diagnosis of present condition”. The complainant’s doctor completed this form and the complainant’s pay was reinstated.

The complainant believed that the City’s collection of the information on the two forms, in particular, the collection of a medical diagnosis, was contrary to the provisions of the Municipal 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) Did the two forms contain “personal information”, as defined in section 2(1) of the Act? If yes,
- (B) Did the City collect the complainant’s personal information contained in the two forms, in compliance with section 28(2) of the Act?
- (C) Did the City provide proper notice of collection of the complainant’s personal information, in compliance with section 29(2) of the Act?

## **RESULTS OF THE INVESTIGATION**

**Issue A: Did the two forms contain “personal information”, as defined in section 2(1) of the Act?**

Section 2(1) of the Act defines "personal information" as 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,  
...
- (g) the views or opinions of another individual about the individual, and
- (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;

The information requested on the forms included the complainant's name, age, her employee number, her medical history, and the opinion of her doctor about her injury. It is our view that when completed, the forms contained information that met the requirements of paragraphs (a), (b), (c), (g), and (h) of the definition of “personal information” in section 2(1) of the Act.

**Conclusion:** The two forms contained the complainant's “personal information”, as defined in section 2(1) of the Act.

**Issue B Did the City collect the complainant's personal information contained in the two forms in compliance with section 28(2) of the Act?**

Section 28(2) of the Act sets out the circumstances under which an institution under the Act can collect personal information. This section 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**. [emphasis added]

**“Fitness Assessment- Return to Work” form**

The City stated that it had relied on the “necessary to the proper administration of a lawfully authorized activity” condition in section 28(2) of the Act for its collection of the complainant's

personal information contained in this form. The City indicated that the lawfully authorized activity was the administration of the City's short term disability program. The City advised that its legal authority for this activity was section 207(48) of the Municipal Act which states, in part:

By-laws may be passed by the councils of all municipalities:

...

(48) Subject to the *Health Insurance Act*, for providing by contract either with an insurer licensed under the *Insurance Act* or with an association registered under the *Prepaid Hospital and Medical Services Act*,

...

ii group accident insurance or group sickness insurance for employees or retired employees or any class or classes thereof and their spouses and children ...

The City also stated that under the Workers' Compensation Act, employers are required to actively participate in employee rehabilitation.

The City submitted that, the "Fitness Assessment - Return to Work" form did not ask for any medical diagnosis. The City, however, noted that the complainant's physician had indicated that the complainant's injury involved her right ankle and left knee, although this information had not been required by the City.

We examined the completed form. The form asked questions about the work-related physical activities that the complainant could perform if she returned to work on modified duties, for example, the extent to which she could walk, stand, sit, etc., and the accommodation needed to enable her to return to work. It did not request any medical diagnosis.

It is our view that the administration of the City's short term disability program for its employees is a lawfully authorized activity. It is also our view that part of the administration of this program would require a determination of whether an employee should remain on short term disability or whether they could return to work and if accommodation was needed to facilitate their return. The questions asked by the City on this form concerned the complainant's work related limitations and restrictions. In our view, the City's collection of the complainant's personal information was, therefore, necessary to the proper administration of a lawfully authorized activity and was thus in compliance with section 28(2) of the Act.

#### **"Attending Physician's Statement" form**

The City acknowledged that question 3 of this form had requested diagnostic medical information. However, it was the City's position that some diagnostic information was required in order to determine the appropriateness of the length of absence of an employee for a particular incident and also to determine the ability of the employee to perform modified work.

The City stated that it had relied also on section 28(2) of the Act, "necessary to the proper administration of a lawfully required activity" for its collection of the complainant's personal

information on this form; again the “activity” was the administration of the City’s short term disability program as authorized under section 207(48) of the Municipal Act (please see above). We examined the form completed by the complainant’s doctor. Question 3 of the form asked for “Diagnosis of present condition” both “primary” and “additional conditions or complications which might affect duration of absence from work”. Question 5 asked for “date of hospital in-patient admission” and question 6, “a description of any surgery that was performed”.

As previously stated, we accept that the administration of the City’s short term disability program is a lawfully authorized activity and that the City requires sufficient information to determine if an employee can return to work and what, if any accommodation is required. However, it is our view that the information requested in questions 3, 5 and 6 of the “Attending Physician’s Statement” form would not have been necessary to such a determination and that the information obtained from the “Fitness Assessment - Return to Work” form would have assisted in determining if and when an employee could return to work. In our view, the City has not shown that the collection of the personal information in questions 3, 5, and 6 of the ‘Attending Physician’s Statement’ form was “necessary” to the proper administration of its short term disability program and therefore, the City’s collection of this personal information was not in compliance with section 28(2) of the Act.

During the course of our investigation, the City provided us with a copy of its revised “Attending Physician’s Statement”. We noted that Part 2, question 1 still required a medical diagnosis and that question 6 asked for the “nature of treatment” including any surgery, medication, dosage and frequency. It is our view that this information would not be necessary in determining whether an employee can return to work or what accommodation is required.

**Conclusions:** The City’s collection of the complainant’s personal information on the “Fitness Assessment - Return to Work” form was in compliance with section 28(2) of the Act.

The City’s collection of the complainant’s personal information on questions 3, 5, and 6 of the “Attending Physician’s Statement” was not in compliance with section 28(2) of the Act

**Issue C: Did the City provide proper notice of collection of the complainant’s personal information, in compliance with section 29(2) of the Act?**

Section 29(2) of the Act states:

If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and

- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

The City acknowledged that it did not provide the complainant with proper notice of its collection either verbally or on its forms.

The City, however, advised that its forms had since been revised to include notice of collection and provided us with copies of the amended forms. We examined the revised forms and found that the notices on both met the requirements of sections 29(2)(b) and (2)(c) of the Act but not section 29(2)(a).

In our view, notice of legal authority should include a reference to the specific section(s) of the Act or Acts that authorizes the collection. The City referred to the Municipal Act and to the Workers' Compensation Act but did not cite the relevant section or section(s) of these Acts authorizing the collection. We are, therefore, of the view that the City's revised forms did not provide proper notice as required by section 29(2) of the Act.

**Conclusion:** The City did not provide proper notice of its collection of the complainant's personal information in compliance with section 29(2) of the Act

## SUMMARY OF CONCLUSIONS

- The two forms contained the complainant's "personal information", as defined in section 2(1) of the Act.
- The City's collection of the complainant's personal information contained on the "Fitness Assessment - Return to Work Form" form was in compliance with section 28(2) of the Act.
- The City's collection of the complainant's personal information on questions 3, 5, and 6 of the "Attending Physician's Statement" was not in compliance with section 28(2) of the Act.
- The City did not provide proper notice of its collection of the complainant's personal information in compliance with section 29(2) of the Act.

## RECOMMENDATIONS

We recommend that the City:

1. remove questions that ask for a medical diagnosis, type of surgery, and medication, on its revised "Attending Physician's Statement" form.

2. include in the notice of collection on its revised forms, a reference to the specific section(s) of the Act(s) that authorizes the collection.

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

Original Signed By: \_\_\_\_\_  
Susan Anthistle  
Compliance Review Officer

April 30, 1996 \_\_\_\_\_  
Date

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