

FILE NO. - 93/015

**REPORT WITH RESPECT TO THE APPLICATION  
FOR REVIEW OF [REDACTED] WITH RESPECT TO INFORMATION  
REQUESTED FROM SASKATCHEWAN HEALTH**

This report deals with two requests for reviews arising out of the refusal in each instance by Saskatchewan Hospital, North Battleford, to provide access to records in the possession of the Hospital relating to two separate complaints of harassment made by two different employees of the Hospital about the Applicant, who is also employed at the Hospital (the "Employer").

As the result of each complaint, two separate investigations were carried out by the Hospital with respect to the conduct of the Applicant. With respect to one such complaint, the employer determined that the complaint was well founded and imposed a suspension. With respect to the other complaint, the employer determined that the complaint was not substantiated.

In each case, the Applicant has requested access to records of personal information about himself collected in each of the said investigations, but in each case was granted only limited access, with certain of the records being withheld on the grounds that they contained "personal information" about individuals within the

meaning of *The Freedom of Information and Protection of Privacy Act* (the "Act") and therefore could not be released in view of the prohibition in Section 29(1) of the Act.

The investigations were, in each case, internal to the institution and it is not disputed that the information which was collected, and to which the Applicant seeks access, is personal information about the Applicant within the meaning of the Act, and that it was collected for the purpose of determining whether the complaints were justified. In each case, during the course of the investigation, meetings were held by the employer with the Applicant, and he was given some, but not all, of the information collected by the employer.

It does not appear to me to matter whether the Applicant claims to be entitled to this information under Section 31 of the Act or under Section 5 of the Act, as in either case he would be entitled to the information, unless it is shown by the Employer that it is entitled to refuse access under one or more of the various exemptions provided for in the Act, in this case Section 29(1), which provides:

**"29(1)** No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30."

However, this prohibition against disclosure is specifically subject to the exceptions in subsection 2 which provides in part:

"29(2) Subject to any other act, personal information in the possession or under the control of a government institution may be disclosed:

- (a) for the purpose for which the information was obtained or compiled by the government institution or for a use that is consistent with the purpose;
- (l) for the purpose of:
  - (i) management;
  - (ii) audit; or
  - (iii) administration of personnel

of the Government of Saskatchewan or one or more government institutions;"

I am not impressed with the argument that the information in question is "personal information" about other individuals within the meaning of the Act. The information was provided to the employer by each of the complainants with the expectation that it would be acted upon rather than being held confidential, and the same is true of information obtained by the employer from other individuals. The Act must be given a purposive interpretation, and accordingly when characterizing information as "personal information" it is necessary to consider whether the disclosure of such information would constitute an undue invasion of privacy of an individual, which in turn requires a consideration of whether the information was given with a reasonable expectation that it would be held confidential.

In my view, all of the information collected by the Employer from the complainant and third parties in the course of both investigations was collected to be used by the

Employer for assessing the validity or otherwise of the complaint. There was no reasonable expectation that such information was being provided on a confidential basis. In fact, under the circumstances, the only reasonable expectation would be that it would be disclosed to the Applicant. The provisions in the Act dealing with "personal information" are designed to protect the privacy of individuals, and I am unable to agree that disclosure of these records will result in the invasion of privacy of the complainants or any other individuals who have supplied information for the purpose of these investigations.

Furthermore, and in any event, even if some of the information could be considered "personal information" it appears to me that such information comes within one or more of the exceptions to Section 29(1) contained in Section 29(2). The investigations were carried out by, and were a necessary part of the management of the institution, and were directly related to the administration of personnel within the purview of Sections 29(2)(l)(i) and (ii).

Finally, I am unable to understand how such investigations could be conducted without the person charged being given a full and fair hearing, which necessarily involves disclosure of the evidence against him. Such disclosure would be consistent with "the purpose for which the information was obtained or compiled..." as provided in Section 29(2)(a). I do not think that the Act prevents such disclosure.

Consequently, it is my recommendation that the Employer should give access to the Applicant of all records pertaining to him relating to each of the investigations in question.

Dated at Regina, Saskatchewan this 7<sup>th</sup> day of March, 1994.

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**Derril G. McLeod, Q.C.,  
Commissioner of Information and  
Privacy for Saskatchewan**