



**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 I93-054P**

### **MINISTRY OF ENVIRONMENT AND ENERGY**

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## INTRODUCTION

### Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Environment and Energy (the Ministry).

The complainant was concerned that the Ministry had improperly disclosed his personal information in its publication "ENVIRONMENTAL HIGHLIGHTS" and to the media, contrary to the provisions of the Freedom of Information and Protection of Privacy Act (the Act). In addition, the complainant was concerned that the personal information disclosed was inaccurate.

### 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) Did section 37 of the Act apply to the personal information?
- (C) Was the disclosure of the personal information in accordance with section 42 of the Act?

The issue regarding the complainant's concern about the accuracy of the personal information disclosed has been addressed under the "Other Matters" section of this report.

## RESULTS OF THE INVESTIGATION

### Issue A: Was the information in question "personal information" as defined in section 2(1) of the Act?

The information disclosed in the published article contained the complainant's name, the company where he had been employed, details of his conviction for offences under the Environmental Protection Act (the EPA), and the amount the complainant was said to have been fined. Similar information was contained in a press release.

According to the Ministry, the charges against the complainant were laid as a direct result of his employment-related activities rather than his private activities. Thus, it was the Ministry's position that the information disclosed was not the complainant's personal information.

In Order P-434, Assistant Commissioner Mitchinson held that information is not automatically excluded from the scope of section 2(1), "simply because it was created in the employment context."

The article and press release identified that it was the complainant who had been convicted and fined. Although the complainant had been charged as a result of his employment activities, it was he, personally, who had been convicted and ordered by the court to make restitution. Therefore, it is our view that the information in the article and press release was about an identifiable individual and thus, met the requirements of paragraph (h) of the definition of "personal information" in section 2(1) of the Act which states that:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name where 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;

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

**Issue B: Did section 37 of the Act apply to the personal information?**

The Ministry stated that it enforces the EPA and has the authority to collect personal information as part of its investigations process into alleged violations. In this case, the Ministry had conducted an investigation into the activities of the employees of an incorporated company which had resulted in charges being laid against the complainant. The Ministry submitted that the charges against the complainant had been dealt with by the court, where information about the complainant's activities had been placed on record and had thus, become available to the public.

The Ministry stated that in this case, it was merely reflecting information that was already available to the public in order to serve as a deterrent to would-be-polluters.

Section 37 of the Act states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

It is our view that under section 37 of the Act, personal information maintained by an institution can be excluded from the application of Part III of the Act only if the personal information is maintained by that institution for the purpose of creating a record which is available to the general public. In this particular case, it is our view that the Ministry could not be said to have been maintaining the complainant's personal information specifically for the purpose of creating a record that was available to the general public. Therefore, section 37 of the Act did not apply and the privacy provisions of Part III were not excluded.

**Conclusion:** Section 37 of the Act did not apply to the personal information at issue.

**Issue C: Was the disclosure of the personal information in accordance with section 42 of the Act?**

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 42.

The Ministry submitted that the personal information was disclosed in accordance with section 42(c) of the Act, which 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;

Section 43 of the Act further provides that:

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 41(b) and 41(c) only if the individual might reasonably have expected such a use or disclosure.

Where personal information has been collected indirectly, a consistent purpose is one which is "reasonably compatible" with the purpose for which the information has been compiled.

The Ministry stated that in enforcing the EPA, it has the role of informing the public of the ramifications of violations of the EPA so as to deter would-be-polluters. In this case, the Ministry publicized the complainant's violations and the amount of his restitution in order to advise the public and would-be-polluters of the Ministry's enforcement activities. The Ministry stated that by publicizing this information, the public was made aware of its efforts in a geographical area where concerned citizens and the media had shown particular attention to the issues.

In this case, the complainant's personal information had originated from proceedings conducted in court. Except in the most exceptional circumstances, proceedings before the courts are open to the public. This serves the dual purpose of informing the public of judicial proceedings as well as acting as a deterrent to potential would-be-offenders.

In our view, the Ministry subsequently disclosed the complainant's personal information for substantially similar purposes: namely, to inform the public of its enforcement activities and to deter would-be-polluters. Accordingly, it is our view that the Ministry's disclosure was for a purpose that was reasonably compatible with the purpose for which the personal information had originally been compiled by the court. Therefore, the disclosure was for a consistent purpose and was in accordance with section 42(c) of the Act.

**Conclusion:** The disclosure of the personal information was in accordance with section 42 of the Act.

### **Other Matters**

The complainant also stated that some of the personal information contained in the article and press release was inaccurate. The Ministry acknowledged that the information disclosed was not entirely accurate and has responded to the complainant's request for correction under section 47(2) of the Act.

### **SUMMARY OF CONCLUSIONS**

- . The information in question was "personal information" as it is defined in section 2(1) of the Act.
- . Section 37 of the Act did not apply to the personal information at issue.
- . The disclosure of the personal information was in accordance with section 42 of the Act.

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

January 26, 1994 \_\_\_\_\_  
Date

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