



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

INVESTIGATION REPORT

INVESTIGATION I96-018P

MINISTRY OF SOLICITOR GENERAL AND CORRECTIONAL
SERVICES

April 2, 1996



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télec: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint about the Ministry of the Solicitor General and Correctional Services (the Ministry).

On June 26, 1994, the Ontario Provincial Police (the OPP) arrested the complainant and charged him with four offences under the Criminal Code. A separate 'information' for each charge was sworn on July 7, 1994 before a justice of the peace. On July 12, 1994, an OPP community newsletter was drafted which included information about the complainant's arrest and the charges laid against him. Approximately a week later, a copy of this newsletter was distributed to fifteen locations in the area. A copy was posted in a local community store where the complainant had a summer home.

The complainant believed that the OPP's disclosure of his arrest and the charges against him in the OPP's community newsletter posted in the store was contrary to the 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) 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? If not,
- (C) Was the personal information disclosed in compliance with section 42 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,

...

- (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;

The information in the OPP community newsletter included the complainant's first and last name and the four charges laid against him by the OPP. It is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information 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?

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.

"This Part" refers to Part III of the Act which sets out provisions for the protection of individual privacy.

It is our view that under section 37 of the Act, personal information that is maintained by an institution may be excluded from the application of Part III of the Act only if the personal information is maintained by that institution specifically for the purpose of creating a record which is available to the general public. Other institutions cannot claim the exclusion unless they, too, maintain the personal information for this purpose.

The Ministry submitted that the information disclosed in the OPP's community newsletter was "public" within the meaning of section 37 of the Act. The Ministry stated that "in addition to processing an accused individual through the justice system, one of the purposes of the OPP in creating records such as Informations, is to maintain the information as publicly available information." The Ministry further stated that "it has been an ongoing practice of the OPP for many years to make available such information to the public."

However, it is our view that even though the OPP has a practice of notifying the public of criminal charges laid against individuals, it cannot be said that the OPP collects and maintains criminal charges information specifically for the purpose of creating a record that is available to the public within the meaning of section 37 of the Act. For example, a member of the public cannot visit an OPP detachment and access records containing criminal charges information.

Charges in the form of 'informations' or indictments are presented and dealt with in court, and form part of court records which are generally accessible to the public. In our view, it is the courts rather than the OPP that maintains criminal charges information for the purpose of creating records available to the public. Thus, it is our view that in the circumstances of this case, section 37 of the Act was not applicable and the privacy provisions of Part III were not excluded.

Conclusion: Section 37 of the Act did not apply to the personal information disclosed in the OPP's community newsletter.

Issue C: Did the OPP disclose the complainant's personal information in the community newsletter in compliance with section 42?

The Ministry advised that there are no local community newspapers in the area. The Ministry stated that a room in the community store is used as an OPP community policing location and that the OPP's community newsletter is routinely on display at the store. The Ministry further submitted that it has been an ongoing practice of the OPP to provide information to the community with respect to accused persons and their charges.

Under the Act, an institution cannot disclose personal information except in the specific circumstances outlined in section 42 of the Act. In our view, section 42(c) is applicable to the OPP's disclosure of the complainant's personal information in the OPP's community newsletter. Section 42(c) 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**; (emphasis added)

Section 43 further provides that:

Where the information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

It is our view that the OPP would have compiled the complainant's personal information for a law enforcement purpose, namely, to process the accused person (the complainant) through the justice system. It is also our view that the OPP disclosed the complainant's personal information in the community newsletter to notify the public of its law enforcement activities and to deter others from committing similar offences.

It is generally known that charges against an accused individual may be disclosed by law enforcement agencies to the media and are subsequently reported to the public. In the circumstances of this case, since there was no local press, criminal charges such as those laid against the complainant were published in the OPP's community newsletter. In our view, the complainant could have reasonably expected that having been charged with these offences, such information might be released by the OPP to the community. Therefore, in our view, the OPP's

disclosure of the charges against the complainant was for a consistent purpose, in compliance with section 42(c) of the Act.

Conclusion: The OPP's disclosure of the complainant's personal information was in compliance with section 42(c) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information, as defined in section 2(1) of the Act.
- Section 37 of the Act did not apply to the personal information disclosed in the OPP's community newsletter.
- The OPP's disclosure of the complainant's personal information was in compliance with section 42(c) of the Act.

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

April 2, 1996 _____
Date
