



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

INVESTIGATION REPORT

INVESTIGATION I98-004P

Ministry of Community And Social Services

May 27, 1998



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a privacy complaint concerning the Ministry of Community and Social Services (the Ministry).

The complainant in this matter was a divorced support payor whose ex-wife was in receipt of Family Benefits. The complainant had been sent a letter by an employee of the Ministry, an income maintenance officer, requesting that he complete an Ontario Provincial Court form entitled, "Financial Statement." The letter stated, "This will provide us with sufficient information to review your financial situation for the purpose of determining if the amount of support you pay for [named children] is adequate." The letter ends, "I look forward to your cooperation in this matter, as the situation can easily be handled without proceeding through the court system."

The income maintenance officer further requested in her letter that the complainant enclose verification of his income, for example, a recent pay stub, copy of Employment Insurance benefits stub, or income tax return showing business income.

The complainant questioned the Ministry's authority under the Freedom of Information and Protection of Privacy Act (the Act) to collect financial information about him for the purpose of determining whether he was paying adequate support. He also questioned the Ministry's authority as a third party to alter the terms of his divorce settlement and the amount of support agreed to by the complainant and his ex-wife, the parties to the divorce.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question the complainant's "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did the Ministry collect the personal information in compliance with section 38(2) of the Act?

RESULTS OF THE INVESTIGATION

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

Section 2(1) of the Act states, in part, that "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 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 form the complainant was asked to fill out included spaces for the complainant to provide his name, address, income, income deductions, expenses, assets, and debts. Under "Other Information" there was space for the complainant to give the names and dates of birth of children for whom he claimed expenses and the names and relationship to him of other individuals for whom he claimed expenses on the form. The form instructed the complainant to attach a copy of his income tax return for the last year and a statement showing future material changes that might affect his income, expenses, assets, or debts.

It is our view that the information the Ministry requested, including the items required to be filled out on the form and the additional information requested in the letter, met the requirements of the definition of personal information in paragraphs (a),(b),(c),(d) and (h) of the definition of personal information in section 2(1) of the Act. The information in question included the personal information of both the complainant and his children.

Conclusion: The information in question was the complainant's and the complainant's children's "personal information", as defined in section 2(1) of the Act.

Issue B: Did the Ministry collect the personal information in compliance with section 38(2) of the Act?

Section 38(2) of the Act sets out the circumstances under which an institution may collect personal information. 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**. [emphasis added]

The Ministry took the position that it had the authority to collect the information in question, but indicated that its letter to the complainant should have more clearly spelled out its authority to do so. The Ministry submitted that the collection of the personal information in question was necessary to the proper administration of a lawfully authorized activity. The following summarizes the Ministry's submissions:

The Ministry stated that the Family Benefits Act (FBA) authorizes the Ministry to request that social assistance clients pursue all income available to them. Social assistance recipients are responsible for pursuing all sources of income, including adequate support for their children, as a condition of eligibility.

Under section 8 of the FBA regulations, the Director (of social services) may determine that a recipient is not eligible for a benefit if the Director is not satisfied that the recipient is making reasonable efforts to pursue compensation or financial resources to which the recipient is entitled, or eligible for.

Sections 13(7) and (9) of the FBA regulations define financial resources to include payments for support or maintenance made by a court or under an domestic contract or agreement.

The Ministry stated that section 33(3) of the Family Law Act FLA states that an application for support can be made by the Ministry, but that the Ministry rarely does this directly. Instead, the Ministry requires social assistance recipients to pursue their own support arrangements.

The Ministry's Parental Support Workers (PSW's) review support arrangements to determine adequacy of support. The PSW may require a social services recipient to pursue an agreement or make application to the court for support. The Ministry stated that it does not have the power to "set aside an agreement," but it can determine if the current amount of support is adequate under the Child Support Guidelines of the FLA and require the recipient to pursue an increased amount of support. The Ministry stated that PSW's cannot determine if support is adequate without knowing the payor's income. If the recipient and the payor cannot agree to the amount of support, the recipient will make an application for support in court.

The form provided to the complainant is the form currently being used by provincial division courts to file financial statements. The Ministry stated that if a payor does not voluntarily provide financial disclosure, an application for support will be made at court by the social services recipient. At that time, the payor will be required to provide the financial information specified under the Child Support Guidelines.

Taking the above into account, we agreed with the Ministry that determining eligibility for social assistance benefits is a lawfully authorized activity of the Ministry, as is determining an adequate level of support for its clients.

We then considered whether the collection of the personal information was necessary to the proper administration of these activities. We agreed that the Ministry could not properly determine the support level without knowing the payor's income, etc.

The Ministry indicated in its submissions that it had produced a standardized letter to clarify its purpose for requesting financial information from support payors. However, the Ministry took the position in its proposed standard letter to payors that payors were not *obligated* to provide the financial information in question to the Ministry. A payor would, however, be *compelled* to make financial disclosure when the social services recipient made an application in court.

It appeared that the point at which the payor provided the information was a matter of choice for the payor; it was not *necessary* for the payor to provide the information to the Ministry until an application had been made in court. However, collecting the personal information itself would have been necessary for the Ministry to determine adequate levels of support and eligibility for a recipient's benefits. Therefore, it is our view that the collection of the payor's personal information was necessary to the proper administration of a lawfully authorized activity, in compliance with section 38(2) of the Act.

Conclusion: The personal information was collected in compliance with section 38(2) of the Act.

Other Matters

During the course of this investigation, the following matters were identified which should be brought to the institution's attention:

Notice of Collection of Personal Information

Section 39(2) of the Act requires institutions to provide notice of collection of personal information to individuals. It states:

Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, 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 a public official who can answer the individual's questions about the collection.

The Ministry submitted that its proposed standard letter would provide appropriate notice of collection. The Ministry stated that it would ensure that all of its offices across the province used the standard letter.

We reviewed the letter in question to determine whether it contained the elements required for compliance with section 39(2). We found that it included the principle purpose for which the personal information would be used (to determine eligibility of a social assistance client) and the name and business telephone number of the caseworker as the "public official" who could answer questions. The business address of the caseworker was not included.

The Ministry cited its legal authority for the collection as the Family Benefits Act, General Welfare Assistance Act, the Ontario Works Act and the Ontario Disability Support Plan, but did not make reference to the specific sections which granted the legal authority. It is our view that the above notice is not sufficient to meet the requirements of sections 39(2)(a) and (c).

In our view, the specific sections of the legislation that grants the Ministry the authority to collect the personal information should be set out in the notice, in order to be in compliance with section 39(2), rather than a general reference to complete acts of the Legislature.

New Legislation

We also noted that new legislation that was not in effect when this complaint was filed was included in the Ministry's proposed notice of collection. The Ministry also stated that the Ontario Works Act, scheduled to come into effect in spring 1998, gives specific authority to Family Support Workers to collect and disclose personal information for purposes of assisting in legal proceedings for support and in the enforcement of agreements, orders and judgements relating to support.

The Ministry should ensure that any new legislation that comes into effect granting it authority to collect personal information is properly cited in its notice and that the notice is revised accordingly.

The Ministry should also be aware that where new legislation may grant powers concerning law enforcement, different collection provisions may apply.

SUMMARY OF CONCLUSIONS

- The information in question was the complainant's and the complainant's children's "personal information", as defined in section 2(1) of the Act.
- The personal information was collected in compliance with section 38(2) of the Act.

RECOMMENDATIONS

We recommend that the Ministry:

1. include the business address of the individual who can answer questions about the collection within the text of the letter, if the business address of the individual is not on the Ministry's letterhead;
2. include the title of the individual who can answer questions about the collection, if different from the name of the letter writer, even if the name of the individual is supplied;
3. cite the specific sections of the legislation that grants it authority to collect personal information in its notice of collection.

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

Susan Anthistle
Compliance Review Officer

May 27, 1998
Date