



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

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## PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. PC10-39

Office of the Independent Police Review Director

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# PRIVACY COMPLAINT REPORT

**PRIVACY COMPLAINT NO.**                      **PC10-39**

**INVESTIGATOR:**                                      **Mark Ratner**

**INSTITUTION:**                                      **Office of the Independent Police Review Director**

## **SUMMARY OF COMPLAINT:**

The Office of the Information and Privacy Commissioner/Ontario (IPC) received a privacy complaint under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from an individual concerning the Office of the Independent Police Review Director (OIPRD). The OIPRD is an arms-length agency of the provincial Ministry of the Attorney General, and has responsibility for overseeing the handling of all public complaints made against the police, as well as complaints relating to the policies or services of a police force. In carrying out this role, the OIPRD receives complaints from members of the public about the conduct of individual police officers in the province of Ontario.

The complainant in this privacy complaint advised that she had filed a complaint with the OIPRD about the conduct of a police officer. She explained that she was concerned with the fact that complainants to the OIPRD were required to provide their date of birth (DOB) as part of the complaint process, and requested that the IPC review this practice.

In response, the IPC opened a privacy complaint file to assess if the collection of the DOB of OIPRD complainants constituted a permissible collection of personal information under the *Act*.

## **Background**

The following background information was provided by the OIPRD, and was obtained from the OIPRD's website.

As noted, the OIPRD is an arms-length agency of the Ministry of the Attorney General that exists "to provide an objective, impartial office to accept, process and oversee the investigation of public complaints against Ontario's police."<sup>1</sup> While the majority of complaints received by the

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<sup>1</sup> See the website of the OIPRD: <https://www.oiprd.on.ca/CMS/About.aspx>.

OIPRD are referred to the relevant police service for investigation, in some cases, the OIPRD will conduct its own investigation into a public complaint. The powers and duties of the OIPRD are set out in the *Police Services Act*. The OIPRD complaint form requires that complainants provide their name, address, telephone contact information, e-mail address, and DOB, along with the details of their complaint.

The OIPRD explained that its complaint process consists of two stages. During the first stage, an intake staff member with the OIPRD scans complaint forms received for completeness. If the scan reveals that a given form is incomplete, it is sent back to the complainant to fill out in full. Once the form has been completed, the second stage takes place, where a case coordinator is responsible for reviewing the substance of the complaint, and for determining if the matter in question should be referred for investigation.

As a result of the present complaint, the OIPRD indicated that it would change the way in which it manages its intake process. The OIPRD has advised that it will no longer instruct its intake staff to check for the DOB on forms during the first stage of the intake process. If, during the second step in the process, a case coordinator determines that a complaint should be referred for investigation, the DOB would be requested from the complainant at that time. In sum, under its new process, the OIPRD now permits a review of the substance of a complaint by a case coordinator in the absence of a DOB.

Notwithstanding this change to its intake process, the OIPRD affirmed its position that it continues to require the DOB of complainants in cases where complaints are referred for investigation.

## **DISCUSSION:**

The following issues were identified as arising from the investigation:

### **Is the information “personal information” as defined in section 2(1) of the Act?**

The information at issue in this privacy complaint is the date of birth (DOB) of individuals filing complaints about the conduct of a police officer with the OIPRD.

The definition of “personal information” is contained in section 2(1) of the *Act*, which states, in part:

“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, ... [emphasis added].

The definition of personal information explicitly includes an individual’s age as being one of the classes of information that qualifies as personal information under the *Act*. Because an

individual's age can be derived from their DOB, I am satisfied that an individual's DOB qualifies as personal information. The OIPRD concurs with this finding.

**Was the collection of the “personal information” in accordance with section 38(2) of the Act?**

As I have found that the DOB qualifies as personal information, I must now determine whether the collection of the DOB on the complaint form is in accordance with section 38(2) of the *Act*.

Section 38(2) of the *Act* 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.

This provision establishes a general prohibition on the collection of personal information that is subject to three exceptions: personal information may be collected where the collection is (1) authorized by statute; (2) used for the purposes of law enforcement; or (3) necessary to the proper administration of a lawfully authorized activity. In order for a given collection of personal information to be permissible under the *Act*, the institution in question must demonstrate that the collection accords with at least one of these exceptions.

In this case, the OIPRD has taken the position that the collection of the DOB is in accordance with the third exception, that it is “necessary to the proper administration of a lawfully authorized activity.”

In considering whether the collection in question is necessary to the proper administration of a lawfully authorized activity, the lawfully authorized activity in question must first be identified; and second, an assessment must be made as to whether the collection of the information in question is necessary to the proper administration of that activity.

In this case, the lawfully authorized activity in question is the administration of the public complaints process involving Ontario's police by the OIPRD. The legal authority for this activity is set out in the *Police Services Act (PSA)*.

Section 26.2 of the *PSA* states that the functions of the Independent Police Review Director are to manage complaints made by members of the public in accordance with Part V of the *PSA*. Section 56(1)(a) of the *PSA*, which is contained in Part V of the *PSA*, states that the OIPRD may establish rules relating to its “powers, duties, or functions...” Thus, the administration of the complaints process by the OIPRD clearly constitutes a lawfully authorized activity.

Having established the legal authority for the activity in question, the next step is to consider whether the collection of the DOB of OIPRD complainants is necessary to the proper administration of this lawfully authorized activity (i.e., the OIPRD's complaint investigation function).

In this case, the OIPRD has provided a number of justifications to support its position that the collection of the DOB of complainants is necessary.

The primary justification provided by the OIPRD is that the collection of the DOB of complainants is required for identification purposes. The OIPRD explained that police services in Ontario utilize an individual's DOB as an identifier. The DOB of individuals involved in police incidents is normally recorded in police reports, police notebooks, occurrence reports, and other similar documentation. In this regard, the OIPRD has stated that having the DOB of complainants:

Allows the OIPRD to correctly match the complainant with the incident and officer in question.... The complainant DOB may also assist in identifying the officer in question, when there is no other information to identify him or her. Without a DOB there is a risk that a complaint may not be investigated properly.

The OIPRD has also noted that collecting a complainant's DOB is particularly important to ensure that individuals with similar names are not mistaken for one another. The OIPRD has stated:

The name of a complainant alone is insufficient to identify an individual. There are numerous examples of individuals with the same or similar names in the province. The use of a name as the sole source of identification is sometimes difficult with individuals who do not have Anglo Saxon or common names as there may be confusion as to which name is a first name, and which name is a last name on police records.

By using a DOB to assist in the confirmation of the identity of complainants, the OIPRD has stated that it is better able to assess the accuracy of a particular complaint. It has stated that the DOB allows the OIPRD to match the complainant with the particular police officer and the proper incident. As such, the OIPRD has stated that having the DOB helps to ensure that the proper incident and individuals are investigated.

The OIPRD has further stated that it relies upon the DOB as an identifier because the combination of a complainant's name with their address alone is sometimes insufficient to identify an individual. The OIPRD stated that complainants may move, and that frequently, it receives complaints from individuals having no fixed address, which further necessitates the collection of complainants' DOB.

The OIPRD has also stated that it uses the DOB collected from complainants for screening and procedural purposes. As an example, the OIPRD has stated that complaints from minors and individuals under the age of sixteen are dealt with differently from other complaints, and that the DOB is necessary to determine a complainant's age in order to assess whether such special procedures apply.

As noted above, in the majority of cases, complaints received by the OIPRD are referred to the relevant police service for investigation, and the police service in question would require the

DOB for its own identification purposes. Further, investigations may sometimes involve a complainant who is incarcerated. In such cases, the police service is required to provide the applicable correctional institution (either provincial or federal) with the complainant's DOB in order to locate the inmate.

In addition, the OIPRD has stated that the DOB of complainants are useful in screening out multiple complaints received from the same individual.

In sum, the OIPRD has asserted that the DOB of individuals is commonly used as an identifier in the law enforcement community. By collecting and using this information, the OIPRD has stated that it is better able to carry out its mandate.

I have considered the information provided by the OIPRD in this regard. I am satisfied that the collection of the DOB of complainants serves a number of useful purposes, and not having this information might significantly hamper certain investigations, including those where the identity of a complainant may be in question. Because it is not possible to ascertain in advance the circumstances under which a DOB may be required, I am satisfied that it is reasonable and necessary to include DOB as a mandatory field on the OIPRD form.

I am therefore satisfied that the collection of the DOB of complainants by the OIPRD is necessary to the proper administration of a lawfully authorized activity, and is therefore in accordance with section 28(2) of the *Act*.

**CONCLUSION:**

I have reached the following conclusions based on the results of my investigations:

1. The date of birth (DOB) of OIPRD complainants qualifies as personal information under section 2(1) of the *Act*.
2. The collection of the DOB of OIPRD complainants is in accordance with section 38(2) of the *Act*.

Original Signed By: \_\_\_\_\_  
Mark Ratner  
Investigator

July 27, 2011 \_\_\_\_\_