



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

INVESTIGATION REPORT

INVESTIGATION I93-044M

A MUNICIPAL LICENSING COMMISSION

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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a municipal licensing commission (the Commission). The complainant, a taxicab driver, believed that the Commission breached the Municipal Freedom of Information and Protection of Privacy Act (the Act) in the following ways: 1. The Commission collected "trip sheet" records, in contravention of the Act; 2. the Commission collected records of criminal record convictions, in contravention of the Act; and 3. the Commission was not taking proper measures to ensure the security of records of personal information in its training section, in contravention of the Act.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Did the records in question contain "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the personal information in the trip sheets collected in accordance with section 28(2) of the Act?
- (C) Was notice provided for the collection of the personal information in trip sheets in accordance with section 29(2) of the Act?
- (D) Was the personal information in the records of criminal convictions collected in accordance with section 28(2) of the Act?
- (E) Was notice provided for the collection of the personal information in the records of criminal convictions in accordance with section 29(2) of the Act?
- (F) Did the Commission define, document and put into place reasonable measures to prevent unauthorized access to the records in the training section, in accordance with section 3(1) of Regulation 823, R.R.O. 1990, as amended?

RESULTS OF THE INVESTIGATION

Issue A: Did the records in question contain "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" as 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,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if 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;

Trip Sheets

Trip sheets are forms that are filled out by taxicab drivers as they progress through their driving shift. The Commission mandates the type of information that is to be recorded on these forms.

It is our view that trip sheet records contain the following "personal information", as defined in sections 2(1)(b),(c),(d),(e) and (h) of the Act: name, address, and signature of the driver, the driver's license number, "Other remarks", where the driver gives his opinion, destination (to and from) of each trip made by the driver, "in" and "out" times for each trip, amount of fare collected for each trip, whether it was paid in cash or by charge, and name of taxicab owner.

It is our view that trip sheet records contain the following information that is not "personal information" as defined in section 2(1) of the Act: taxicab number, taxicab provincial motor vehicle number, odometer and meter readings, and list of equipment faults.

We also considered whether trip sheets contained the "personal information" of passengers. Trip sheets contain the details of each trip such as times, pick up point (which may be an individual's address), and destination. However, it is our view that such details of a trip are not recorded

information about an identifiable individual and therefore trip sheets do not contain the "personal information" of passengers.

Records of Convictions of Criminal Offences

These records contain the individual's (applicant's) name, maiden name (if applicable), address, telephone number, occupation, date of conviction, type of offence, disposition of offence, application type, date and number. It is our view that these records contain the "personal information" of the individuals, as defined in sections 2(1)((a),(b),(c),(d) and (h) of the Act.

Training Section Records

Both the complainant and the Commission submitted that the training section had records which contained personal information. The Commission submitted a partial listing of its Directory of Records, which included a listing of the following personal information banks: Cab Owners' Waiting List files; Drivers' Waiting List Files; Taxicab Driver Student Records; Training Staff Personnel Records; Licensee Reports; Staff Attendance Records.

In our view, the training section contains records of "personal information" as defined in sections 2(1)(a) through (h) of the Act.

Conclusion: The records in question contained personal information, as defined in section 2(1) of the Act.

Issue B: Was the personal information in the trip sheets collected in accordance with section 28(2) of the Act?

The complainant was concerned about the collection of trip sheets for the following reasons: drivers on shift may be stopped by a Licensing Enforcement Officer at any time and be required to allow inspection of their trip sheets; drivers may also be required to produce trip sheets for inspection at the Commission's Test Centre; trip sheets contain financial (income) information about the taxicab driver; the Commission collects the same type of financial information repetitively; requiring drivers to retain a list in the taxicab of the amount of fares collected may place the driver in danger from physical assault and/or robberies; taxicab passengers may also be placed in danger if other individuals observe their home addresses, destinations, and times of their trips recorded on the trip sheets.

Section 28(2) of the Act sets out the circumstances under which personal information may be collected on behalf of an institution. This section states:

(2) 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.

It is our view that the Commission's **inspections** of trip sheets **do not qualify as collections of personal information** within the meaning of the Act. In order for a collection to take place, retention of the information in a recorded form must occur. Therefore, in our view, section 28(2) of the Act does not apply to the inspection of personal information on trip sheets because collection of personal information in recorded form does not take place. However, it is our view that section 28(2) applies when the trip sheets themselves are retained by the Commission, or when personal information from trip sheets is recorded by the Commission. Thus, when we discuss collection below, we are only considering circumstances where the personal information on trip sheets is actually collected by the Commission within the meaning of the Act.

In response to our draft report, the complainant stated that the report provided no authority for the conclusion that collection within the meaning of the Act required retention in recorded form. The complainant's view was that this conclusion was contrary to the purpose of the Act:

- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

The complainant was of the view that our interpretation "frustrated the purpose of the Act and unjustifiably narrows its scope of application".

Our interpretation has evolved over time, and has been applicable to both appeals and privacy complaints. It is our view that in order for information to be "collected", it must be physically recorded and retained in some manner, other than in an individual's mind. Otherwise, it could not meet the definition of "personal information" within the meaning of the Act (ie. **recorded** information about an identifiable individual), nor could it logically be said to be "held" by an institution, or be accessed by the individual. Therefore, we remain of the view that inspections of trip sheets do not qualify as collections within the meaning of the Act.

Personal information on trip sheets may be collected by the Commission under the following circumstances: in the course of an investigation by the Commission; after an inspection, when a Licensing Enforcement Officer cites a taxicab driver for a violation of the by-law; and when the probationary owner attends his quarterly review and brings the trip sheets for the past three months. The Commission submitted that trip sheets were rarely retained in the last two circumstances.

Commission Investigations

The Commission submitted that during the course of the Commission's investigation of a complaint against a taxicab owner or driver, a Licensing Enforcement Officer may request the trip records for inspection to verify the facts of the complaint (e.g. time of incident, name of driver, route). The Commission submitted that its investigations or inspections are law enforcement activities conducted for the sole purpose of determining whether there is a basis to initiate proceedings before the Commission or provincial court for violating the By-law. The trip records are not retained unless they are to be used as evidence in a proceeding before the Commission or before a court of law. The Commission stated that in these cases, the trip records are collected in accordance with section 28(2) of the Act, for law enforcement purposes.

The Commission submitted that in Orders M-4, M-10, and M-34, the Information and Privacy Commissioner had concluded that by-law enforcement processes were law enforcement activities as defined in sections 2(1)(b) and (c) of the Act, which state:

"law enforcement" means,

- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

It is our view that the Commission's collection of personal information in trip sheet records in the course of its investigations as described above, is a collection for the purposes of law enforcement. Therefore, it is our view that the personal information contained in trip sheets is collected in accordance with section 28(2), for the purpose of law enforcement, when the Commission carries out its investigations.

In response to our draft report, the complainant stated:

The draft report does not suggest that the financial information set out on trip sheets is relevant to a complaint. Indeed it is hard to imagine a case in which the investigation of a complaint would require that information...

The draft report does not but should consider why Commission investigations require the entire trip sheet instead of only those portions of the trip sheets containing information relevant to the investigation at hand.

Accordingly, we disagree with the conclusion in the draft report that collection of trip sheets in the context of a Commission investigation is always and necessarily permitted by section 28(2) of the Act. It is submitted that this conclusion should not apply to those portions of the trip sheets setting out financial information.

It is our understanding that the Commission does in fact, receive complaints about fares, although we did not previously list fares as an example of one of the types of information that may be verified during the course of a Commission investigation. Thus, we are of the view that it would be necessary for the Commission to collect information regarding fares (i.e. the "financial information" set out on trip sheets) when investigating a complaint where the fare is a relevant factor, in the view of the Commission.

With respect to the complainant's concerns that we did not consider why Commission investigations "require" the entire trip sheet, we wish to clarify our view that inspections do **not** qualify as collections within the meaning of the Act. The Commission may "require" production of the entire trip sheet. However, a collection of personal information would not take place unless: 1) personal information from the trip sheet was recorded and retained by the Commission or 2) the trip record itself was retained by the Commission.

It is our understanding that in most cases, the entire trip record is not retained; only specific portions of information from trip sheets which are relevant, in the Commission's view, to the investigation at hand, are collected. The type of information that is collected depends on the nature of the investigation, and may include financial information.

As we have previously stated, the entire trip record is retained only if it is to be used as evidence in a proceeding before the Commission or before a court of law. Since the entire trip record is collected with the purpose in mind of using it as evidence in a court or Commission proceeding, it is our view that the entire trip record would then be collected for the purpose of law enforcement, as defined above.

Thus, we remain of the view that the personal information contained in trip sheets, including "financial information", is collected in accordance with section 28(2), for the purpose of law enforcement, when the Commission carries out its investigations.

Collection After Inspections/Issuing a Citation

As we understand the Commission's inspection process, any taxicab driver or owner (probationary or regular) may be required to allow a Licensing Enforcement Officer to inspect their trip sheets. The Licensing Enforcement Officer may issue a citation to the driver for contravening the By-law.

The Commission stated that retention of the actual trip sheets under these circumstances is rare since the Licensing Enforcement Officer would record the details of the alleged violation in his record book. It is our view that by recording personal information from the trip sheet, the Licensing Enforcement Officer would be "collecting" the personal information. If collection of personal information on trip sheets takes place under these circumstances, it is our view that this collection would also be made for the purposes of law enforcement, in accordance with section 28(2) of the Act.

In response to the draft report, the complainant re-stated his concerns: with respect to collection within the meaning of the Act necessitating retention, that the collection of financial information was irrelevant and unnecessary for "law enforcement" within the meaning of the Act, and that the collection and inspection of trip sheets was not protected by section 28. We have previously stated our views regarding these issues, and remain of the view that inspections do not qualify as collections. We also re-iterate our view that the collection of financial information may be necessary for law enforcement investigations.

(a) Verifying Probationary Obligations

The Commission submitted that it is responsible for regulating the taxicab industry under the general authority of a named municipal statute (the statute), and that its specific authority to enforce compliance with the statute is contained in By-law 20-85, created under the statute. (See Appendix A for relevant provisions of the statute and By-law, as provided by the Commission).

The Commission stated that trip records are inspected by the Commission to verify that probationary owners have fulfilled their probationary obligations as set out in By-law 20-85, sections 28-33. Trip records are one of the pieces of information used to establish whether drivers are eligible to be granted a taxicab owner's license. Trip records are inspected to verify that a person on the probationary owner's list is earning a living as a driver on a regular shift basis, in accordance with By-law 20-85, sections 66(1) and (2). The Commission submitted that

its collection of personal information on trip sheets was necessary to the proper administration of a lawfully authorized activity, in accordance with section 28(2) of the Act.

Given the fact that the Commission is responsible under the statute for regulating the taxicab industry, and that a by-law has been passed respecting the terms of probation for the granting of owner's licenses, it is our view that the activity of verifying probationary obligations is a lawfully authorized activity of the Commission.

Trip sheets record a driver's daily income per shift, in the form of fares. As we understand the process, if a probationary owner is found not to be earning his living as a driver on a regular shift basis, he may be denied a license. If the Commission was unable to collect this information, it would have no documentary evidence that the probationary owner was meeting the criteria set out in the By-law. Therefore, we conclude that the Commission's collection of trip sheet records for the purpose of verifying probationary obligations, is necessary to the proper administration of a lawfully authorized activity, in accordance with section 28(2) of the Act.

In response to our draft report, the complainant submitted that it should **not** be concluded that this collection was necessary to the proper administration of the taxi industry in accordance with the By-law. The complainant's view was that the draft report did not attempt to determine whether a connection existed between the need to verify that a person on the probationary owner's list was earning a living as a driver on a regular shift basis and the personal financial information contained on a trip sheet. Therefore, we wish to clarify our view as follows:

Simply stated, each trip sheet records a driver's daily income per shift, in the form of fares. It is our view that this "personal financial" information reflects the fact that the probationary owner was earning his/her income by working shifts as a driver, which is a requirement of his/her probation. Accordingly, we remain of the view that the collection was necessary to the proper administration of the lawfully authorized activity of verifying probationary obligations, in accordance with section 28(2) of the Act.

The complainant also stated that the draft report failed to explain how personal financial information may be used to verify whether one is earning a living as a driver on a full-time basis. As stated above, if a probationary owner is found not to be earning his/her living as a driver on a regular shift basis, as evidenced from the information in the trip sheets, he/she may be denied a license. Thus, this information would be used to determine entitlement to a license.

The complainant also stated that the draft report "fails to explain how and why a sworn affidavit to the effect that the deponent earns a living as a driver would not suffice as, and even provide better evidence of, compliance with the by-law".

In our view, the issue to be decided in this report is not which type of record might provide **better** evidence of compliance with the By-law. The issue is whether the collection of the personal information was necessary to the proper administration of a lawfully authorized activity, and this is the issue we have addressed above.

(b) Verifying Probationary Obligations - Licensed Drivers

In its submissions on the draft report, the Commission stated that the information it requested about drivers in its letter to probationary owners (e.g. driver's name, address, provincial and taxicab driver's license number) was collected to verify that the probationary owner was employing licensed drivers. The Commission records driver information such as the driver's Commission license number, name, address, and telephone number and checks to ensure that each driver holds a valid license.

The Commission submitted that drivers' information was collected in accordance with section 28(2) of the Act (i.e. for the purposes of law enforcement) to determine whether there was a basis to initiate proceedings before the Commission or the Provincial Offenses Court. The Commission may hold a hearing with respect to the granting, renewal, suspension or revocation of licenses. A financial penalty may be imposed in provincial court for failure to comply with the By-law, which provides that only licensed drivers may be employed to operate taxicabs.

We agree with the Commission that when it collects (as in records and retains) taxi drivers' personal information to determine if a driver is licensed, that collection is for the purposes of law enforcement, as defined in sections 2(1)(b) and (c) of the Act. Accordingly, we are of the view that this collection as described above, was made in accordance with section 28(2) of the Act.

Conclusion: The Commission's collection of personal information in the trip sheets was in accordance with section 28(2) of the Act.

Issue C: Was notice provided for the collection of personal information in the trip sheets, in accordance with section 29(2) of the Act?

Collection After Inspections/Issuing a Citation and Commission Investigations

Section 29(3) of the Act sets out the circumstances under which notice is not required. It states:

Subsection (2) does not apply if,

- (a) the head may refuse to disclose the personal information under subsection 8(1) or (2) (law enforcement);
- (b) the Minister waives the notice; or
- (c) the regulations provide that the notice is not required.

The Commission initially gave no evidence to show that it provided notice of collection in accordance with section 29(2) to individuals whose personal information in the trip sheets had

been collected when they had been cited for violating the By-law or for the purpose of a Commission investigation.

It is our view that none of the above exceptions apply to the collection of personal information in trip sheets after inspections/issuing a citation and for Commission investigations. Therefore, notice was not provided in accordance with section 29(2) of the Act.

The Commission provided additional submissions with respect to the information the Commission provides drivers during law enforcement investigations and inspections and when a charge is laid under the Provincial Offenses Act, as evidence that proper notice is provided. During the investigation of a complaint, the information provided to drivers includes items such as the fact that a complaint had been registered and an investigation is underway, and the possible charges pending. If information is collected from a trip sheet, or a copy is made of the record, the individual is informed that these will be used as evidence in the investigation. Drivers are also given the telephone number of the Licensing Enforcement Officer who interviews them.

If personal information is collected from a trip sheet when a citation is issued, drivers are informed that the information in their trip records will be used as evidence in supporting charges. The Certificate of Offence states the charge, and includes the signature and badge number of the Licensing Enforcement Officer, whom the driver may contact. Drivers are made aware of the Commission address and telephone number.

We have considered the above submissions and accept that the Commission provides information to drivers in the circumstances described. However, we remain of the view that proper notice, in particular the legal authority for the collection, is not provided by the Commission, as required by section 29(2).

In response to the draft report, the complainant submitted that his comments regarding notice flowed from his previous submissions, and that financial information in trip sheets should not be collected without some specific purpose beyond the currently accepted practices concerning verification of probationary status and other Commission investigations. However, the complainant provided no evidence that the Commission collects this information for any other purpose than the purposes described, which we have found to be in accordance with the Act.

Verifying Probationary Obligations

The Commission submitted that it provides notice of collection to probationary owners in accordance with section 29(2) of the Act, which states:

If personal information is collected on behalf of an institution, the head shall 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 an officer or employee of the institution who can answer the individual's questions about the collection.

The Commission stated that it sends a letter to probationary owners which provides notice of collection. We examined the sample letter provided by the Commission. The letter requests that the probationary owner attend at the Commission's Test Centre and bring his past three months' trip sheet records.

The letter refers to By-law 20-8, Schedule 8, section 66 or 69 as the legal authority for the collection. It states the purpose of the collection as being for an ongoing review of probationary taxicab owners, in accordance with the above By-law. The name, but not the title, of an individual who can answer inquiries, and their business telephone number are included in the letter. The business address of the Commission, which we have assumed is the business address of the individual, is printed on the letterhead. In our view, the notice meets the requirements of sections 29(2)(a) and (b) of the Act, but only partly meets the requirements of section 29(2)(c), since it does not include the title of the individual.

The letter to owners also states, "If you employ someone else to drive your taxicab, the name, address, provincial and taxicab driver's license information of that person will also be required...". In our view, the Commission has not met the requirements of section 29(2) of the Act to provide notice of collection of personal information to drivers whose information is being collected under these circumstances.

In response to our draft report, the Commission submitted that recording the information of a licensed taxicab driver (as above) was not a new collection of personal information, since the information was already on file with the Commission. Therefore, it was the Commission's view that notice of collection to licensed drivers was not required. The Commission also submitted that the requirement to provide notification should be limited to unlicensed drivers.

We do not agree. In our view, a new collection takes place when employers submit information about their drivers (licensed or unlicensed). The new information is then verified with information that has previously been collected during the license application process. In most cases, the information may be the same -- but in our view, that is the point of the verification. It is our understanding that the Commission provides notice for the collection of drivers' personal information during the licensing application process. (See page 13 of report.)

The Commission stated that notifying drivers can be an onerous and sometimes difficult task since the turnover of drivers is extremely high. Unlicensed drivers may be attempting to evade the Commission. Therefore, attempts to notify drivers will be administratively burdensome and often unsuccessful.

We acknowledge the Commission's concerns. However, we remain of the view that unless one the exceptions of section 29(3) applies, notice must be provided to drivers whose personal

information is collected during the process of verifying that a probationary owner is employing licensed drivers, in accordance with section 29(2) of the Act.

Conclusion: The Commission did not provide notice in accordance with the requirements of section 29(2) for the collection of the personal information in the trip sheets.

Issue D: Was the personal information in the records of criminal convictions collected in accordance with section 28(2) of the Act?

Section 28(2) of the Act, as set out previously, also applies to the collection of records of convictions of criminal offences.

The Commission submitted that it collects records of convictions of criminal offences for the following activities: to process applications for a taxicab driver's license and a taxicab owner's license, and to conduct Commission investigations.

Processing Applications for Taxicab Driver's and Taxicab Owner's Licenses

The Commission submitted that the collection of personal information for the processing of applications for licenses is necessary to the proper administration of a lawfully authorized activity, and that the purpose for collecting the record is to ensure that the community enjoys a reasonable expectation of safety and acceptable performance standards.

With respect to taxicab driver's license applications, the Commission indicated that it is responsible for regulating the taxicab industry under the general authority of the statute, with specific authority to enforce compliance with the statute through By-law 20-85, Procedural and General, sections 5(1) and 6(1).

With respect to taxicab owner's licence applications, the Commission submitted that each applicant for a grant of a taxicab owner's license must come before the Commission for a hearing, with "appropriate" documentation, including a record of conviction of criminal offences before a license is granted. The application is reviewed at the hearing. The Commission stated that the collection is also made under the authority of By-law 20-85, Procedural and General, sections 5(1) and 6(1). The record is used to establish that a person is of good character in accordance with sections 66(1) and (2).

Given the fact that the Commission is responsible under the statute for regulating the taxicab industry, and that a by-law has been passed respecting the granting of driver's and owner's licences, it is our view that the activities of processing applications for a taxicab driver's license and for a taxicab owner's license are lawfully authorized activities of the Commission.

As we understand the process, if a person is found to have been convicted of a criminal offence, his license application or renewal may be denied. We accept the Commission's view that the collection of criminal record convictions is necessary in order for the Commission to properly administer its license application activities. We thus conclude that the Commission's collection

of records of criminal convictions, for the purpose of processing taxicab driver's license and owner's license applications, is necessary to the proper administration of lawfully authorized activities, in accordance with section 28(2) of the Act.

Commission Investigations

The Commission submitted that records of conviction of criminal offences may also be collected in the course of investigating a licensee for possible violations of the By-law, but that collections under these circumstances occurred infrequently, such as when matters were before the Commission involving sexual assaults or other serious Criminal Code offences, or when there was a suspicion that an individual had been arrested or convicted of a serious criminal offence. The Commission stated that the records of criminal convictions are used in reports and presented as evidence in a proceeding before the Commission or before a court of law, for the purposes of law enforcement.

The Commission stated that the above investigations were law enforcement activities as described in sections 2(1) (b) and (c) of the Act, and that collections were made in accordance with section 28(2) of the Act (i.e. used for the purposes of law enforcement).

We agree with the Commission that the above investigations are law enforcement activities as defined in sections 2(1)(b) and (c) of the Act, and that the information collected is being used for the purposes of law enforcement when it is prepared as evidence for a Commission hearing or a court hearing. Accordingly, it is our view that the Commission's collection of records of criminal convictions is made in accordance with section 28(2) of the Act.

Conclusion: The Commission's collection of personal information in the records of criminal convictions was in accordance with section 28(2) of the Act.

Issue E: Was notice provided for the collection of personal information in the records of criminal convictions in accordance with section 29(2) of the Act?

Processing Applications for Taxicab Driver's and Taxicab Owner's Licenses

The Commission submitted that the collection of the record of conviction of criminal offences for processing applications for taxicab licenses complied with the notice requirements of section 29(2) of the Act.

Application forms include a separate notice informing the applicant of the legal authority and the purpose of the collection, and the title, address, and telephone number of an individual who can answer applicants' questions. The Commission stated that the notice is brought to the attention of each applicant during the application process. We examined the notice in question, and in our view, the notice was in accordance with section 29(2) of the Act.

Commission Investigations

It is our understanding that the Commission does not provide notice of collection to individuals who are being investigated. As stated previously, section 29(2) of the Act provides that if personal information is collected on behalf of an institution, the individual must be given notice of collection. However, section 29(3) states in part:

Subsection (2) does not apply if,

...

(c) the regulations provide that the notice is not required.

It is our view that section 4(1) of the Regulations made under the Act applies in these circumstances. Section 4(1) of Regulation 823, R.R.O. 1990, as amended, referring to section 29(2) of the Act, states:

An institution is not required to give notice of the collection of personal information to an individual to whom it relates if the head complies with subsection (2) and if,

(a) providing notice would frustrate the purpose of the collection

Notifying an individual prematurely that he is under investigation may result in interference with the investigation and thus frustrate the purpose of the collection, which is to gather evidence for the investigation. Therefore, it is our view that the Commission is not required to provide notice of collection when doing so would frustrate the purpose of the collection.

However, where an institution is not required to provide notice, section 4(2) of the above Regulation requires that "the head shall make available for public inspection a statement describing the purpose of the collection of personal information and the reason that notice has not been given". It is our view that the Commission is required to make such a statement available to the public with respect to its investigations.

Conclusion: The Commission provided notice for the collection of personal information in records of criminal convictions in accordance with section 29(2) of the Act. The Commission was not required to provide notice for its investigations, when doing so would frustrate the purpose of the collection.

Issue F: Did the Commission define, document and put into place reasonable measures to prevent unauthorized access to the records in the training area, in accordance with section 3(1) of Regulation 823, R.R.O. 1990, as amended?

Although the complainant stated that he believed some improvements had been recently made by the Commission regarding the security of records in the training section, his specific concerns with security involved the following:

- when the complainant had visited the training section, no staff were present while he waited;

- when a staff member did appear, they removed the complainant's file from an unlocked cabinet;
- files had been left out on desks;
- the individual whom he was visiting looked through files on his own and other staff members' desks in an effort to locate the complainant's file.

Section 3(1) of the Regulation states:

Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put into place, taking into account the nature of the records to be protected.

The Commission submitted that its policy and practice is that no one, other than staff working in the training section, is left alone in the office. None of the staff of the training section were aware that the incident described by the complainant had occurred.

In its submissions, the Commission **defined** the specific measures it had **put into place** to prevent unauthorized access:

- files are stored in cabinets within the training office;
- the training office is always locked when no training staff are present;
- key distribution for the door to the section is limited to senior managers and staff who work in that office;
- file access is limited;
- each file is assigned to a single training staff employee who is responsible for that file;
- individuals other than staff are not allowed in the training office unaccompanied.

The Commission stated that it does not have a "clean desk" policy, explaining that staff work on a number of files simultaneously, and it is impractical to store and lock all these files regularly.

The determination of whether **reasonable** measures had been put into place hinges on the meaning of "reasonable" in section 3(1) of Regulation 823, R.R.O. 1990, as amended. Black's Law Dictionary defines reasonable as:

Fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view ... Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable.

Thus, for reasonable measures to have been put into place would not have required a standard so high as to necessitate that every possible measure be pursued to prevent unauthorized access. In our view, the measures identified above are consistent with Black's definition of "reasonable" -- appearing to be fair and suitable under the circumstances.

The remaining question is whether the measures were **documented** in accordance with section 3(1). The Commission provided a partial listing of its Directory of Records, which lists the access controls for the various categories of records stored in the training section. The access controls listed are locked storage and computer passwords.

It is our view that listing these measures as access controls in an institution's Directory of Records is not sufficient to prove that the measures had been documented, in accordance with section 3(1). Section 3(1) of the Regulation applies to the institution's security program in its day-to-day functions. It operates separately from section 35(1) of the Act, which provides that access controls must be listed in an institution's personal information bank index. Since the Commission did not provide any evidence other than a letter and excerpts from its Directory to show that reasonable measures to prevent unauthorized access had been documented, we are of the view that the Commission did not document reasonable measures to prevent unauthorized access, in accordance with section 3(1).

The complainant submitted that there was no evidence that the Commission had, prior to the preparation of our draft report, in fact defined and put into place **any** measures to prevent unauthorized access to files containing personal information. The complainant's view was that if any evidence exists, the report should describe it.

Prior to preparing our draft report, we asked the Commission if it had defined, documented and put into place measures to prevent unauthorized access to the records in question. The Commission responded by providing the list of measures set out on page 15 of this report. We had accepted the Commission's submission, as well as the complainant's earlier submission (see page 14 of this report) that improvements had recently been made to security. Therefore, our conclusions with respect to this issue have not changed.

Conclusions: The Commission defined and put into place reasonable measures to prevent unauthorized access, in accordance with section 3(1) of Regulation 823, R.R.O. 1990, as amended. These measures were not, however, documented.

Other Matters

Manner of Collection

We also considered whether the manner of collecting personal information in trip sheets and records of convictions met the requirements of section 29(1) of the Act, which states in part that an institution shall collect information only directly from the individual to whom the information relates unless:

- (a) the individual authorizes another manner of collection;
...
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
...
- (g) the information is collected for the purpose of law enforcement; or
...

Trip Sheets

In our draft report, we stated that we had found there was an indirect collection of drivers' personal information when owners provided their trip sheets, and that this collection was in accordance with section 29(1)(a) of the Act since the driver, by providing his/her trip sheets to the employer, would be authorizing the collection.

In response to the draft report, the complainant submitted that the Act makes no provision for indirect collection from an individual through an agent such as an employer, nor does it make any provision for implicit authorization. The complainant also submitted that it is illogical to conclude that by complying with an employer's rule to provide personal information, an employee had authorized the release of the personal information to any other person or institution for any other purpose.

In response to the draft report, the Commission submitted that the collection was made for the purposes of law enforcement. This was discussed on pages 8 and 9 of this report.

After considering both the complainant's and the Commission's submissions, we have concluded that section 29(1)(f) of the Act applies to the indirect collection of drivers' personal information. This section states in part:

An institution shall collect personal information only directly from the individual to whom the information relates unless,

...

(g) the information is collected for the purpose of law enforcement; or

...

Since the information in question is collected for the purpose of law enforcement, it is our view that it is collected indirectly, in accordance with section 29(1)(g) of the Act.

Records of Convictions of Criminal Offences

The Commission stated that its current practice is for applicants for drivers' and owners' licenses to complete and sign a police access to information waiver, authorizing the police to release the information to the Commission. In our view, by signing the police waiver form authorizing the police to release records of convictions of criminal offences to the Commission, the applicant would be authorizing the Commission to collect his personal information indirectly, in accordance with section 29(1)(a) of the Act. In the circumstances where the Commission requests the record of criminal convictions for the purpose of its investigations, it is our view that the Commission's collection of records of criminal convictions is in accordance with section 29(1)(g) for the purposes of law enforcement, or section 29(1)(f) for the conduct of a proceeding before the Commission.

SUMMARY OF CONCLUSIONS

- The records in question contained personal information, as defined in section 2(1) of the Act.
- The Commission's collection of personal information in the trip sheets was in accordance with section 28(2) of the Act.
- The Commission did not provide notice in accordance with the requirements of section 29(2) of the Act for the collection of the personal information in the trip sheets.
- The Commission's collection of personal information in the records of criminal convictions was in accordance with section 28(2) of the Act.
- The Commission provided notice for the collection of personal information in records of criminal convictions, in accordance with section 29(2) of the Act. The Commission was not required to provide notice for its investigations, when doing so would frustrate the purpose of the collection.
- The Commission defined and put into place reasonable measures to prevent unauthorized access, in accordance with section 3(1) of Regulation 823, R.R.O. 1990, as amended. These measures were not, however, documented.

RECOMMENDATIONS

We recommend that the Commission incorporate the following points into its procedures:

1. that the measures for preventing unauthorized access to the records in its training office be documented;
2. that staff in the training office be advised that a document outlining these measures exists, and a copy of the documented measures be made available to all staff;
3. that proper notice of collection of personal information in trip sheets be provided to probationary owners and the drivers they employ, as well as to those individuals whom the Commission investigates, in accordance with section 29(2) of the Act;
4. that where the Commission is not required to provide notice, the Commission make available for public inspection a statement describing the purpose of the collection of personal information for its investigations, and the reason that notice has not been provided, in accordance with section 4(2) of Regulation 823 under the Act.

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

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

July 21, 1994 _____
Date