



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

INVESTIGATION REPORT

INVESTIGATION I94-011P

THE MINISTRY OF NORTHERN DEVELOPMENT AND MINES

September 13, 1994



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/Téloc: 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 concerning the Ministry of Northern Development and Mines (the Ministry).

In 1984, the complainant acquired a parcel of land that held mining rights granted under the Mining Act. In 1991, the Mining Act was amended, providing for fee increases and changes to the mining land tax (previously called acreage tax) rate. The complainant believed that the amendments would lead to the confiscation of the properties of owners who could not pay the higher taxes to maintain their mining rights.

On May 3, 1993, the complainant wrote to all but three provincial members of parliament (MPPs) soliciting their support for a private member's bill which he felt would correct "an injustice inadvertently caused by the recent changes to the Mining Act and Regulations."

On May 25, 1993, the Minister of Northern Development and Mines (the Minister), one of the three MPPs who had not received the letter from the complainant, wrote to the Liberal MPP who was his party's "mines critic." In her correspondence, the Minister referred to the complainant's letter and discussed his particular situation with respect to his property and the mining land taxes.

On January 10, 1994, the complainant wrote again to those MPPs from whom he had not received a reply to his earlier letter. At this time, a copy of the Minister's letter was forwarded to the complainant from the Liberal MPP via another MPP -- the member who had planned to introduce the private member's bill.

The complainant believed that the Minister's letter to the Liberal MPP was an "attempt to discredit me and my position" and to "distract attention from the issue I have raised." The complainant stated that in his letter to MPPs, he "was careful to focus on the inequity caused by the Act" and not the issue "related to the fact that the Ministry had previously illegally levied a tax on my property." The complainant, therefore, believed that the Minister's letter disclosing information about him, his property and its mining potential, and the provincial mining taxes he had paid, was contrary to the provisions of 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 the Ministry disclose the complainant's personal information 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 defines "personal information" in part, as:

recorded information about an identifiable individual, including

- (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;**
- (h) the individual's name where it appears with other personal information relating to the individual.. (emphasis added)

The Minister's letter to the MPP included the following information:

The name of the complainant; when he acquired his parcel of land and what it consisted of; how much he paid in acreage tax and at what time; that he was the only holder of patented mining lands who had continually expressed concerns about the increases in the mining land taxes; the complainant's views that this was an attempt by the province to confiscate his property; that if he chose not to pay mining land taxes on his property, he would be able to continue to enjoy the use of his lands; that he had not engaged in any mining activity on his property nor had he expressed plans to do so; his views that he should continue to maintain the mining rights to his property but be exempt from the new mining tax rate; that he did not want the mining or mineral exploration sector to be allowed on his land if he relinquished his mineral rights and continued to hold the surface rights; that the Minister and her predecessor had had contacts with him and that several ministry staff had spent many hours with him on this issue; that he might not want to pay increased taxes for a right that in the past was inexpensive to hold; and that he had paid mining taxes in the past and had only objected strenuously since 1991 when the increases were enacted.

It is our view that the above information met the requirements of either paragraphs (b) or (h) of the definition of personal information in section 2(1) of the Act.

In its submissions to our draft report, the Ministry said that it was not factually correct to say that the Minister's letter had disclosed how much the complainant had paid in acreage taxes, since no amount had actually been given. However, the letter gave the number of hectares for which the complainant had paid taxes, at a specific rate per year, for a certain number of years. Thus, the acreage taxes that the complainant had paid could easily be determined from this information. In our view, this constituted a disclosure of how much the complainant had paid in acreage taxes.

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

Issue B: Did the Ministry disclose the personal information in compliance with section 42 of the Act?

Under the Act, an institution cannot disclose personal information in its custody or under its control except in the circumstances outlined in section 42.

The Ministry submitted that the complainant had, through disclosures in newspaper articles, discussions with an investigative journalist and in writing to the MPPs, "impliedly consented to the disclosure" of his personal information.

Section 42(b) of the Act states that an institution shall not disclose personal information in its custody or under its control except:

where the person to whom the information relates has identified that information in particular and consented to its disclosure;

Two newspaper articles, one of which was written by the complainant, expressed his concern that the amended legislation would lead to the confiscation of properties such as his. In the background appendix to his letter to the MPPs, the complainant mentioned that he had corresponded with the Minister's staff about the legislation, as well as pointing out that "the tax is now extended to other properties such as mine" and that he did not support the "effective theft of my property by mining firms."

However, the complainant contended that in his letter, he had been "careful to focus only on the inequity caused by the Act." He did not introduce any information relating to the other issue of the Ministry's "improper administration" with respect to the previous levy of taxes on his property. The complainant further advised that the Mining Act "deals with the policy issues and the intent of the legislation and my letter to M.P.P.s restricted itself to this issue;" the information disclosed in the Minister's letter "was not directly relevant."

Upon reviewing this material, we concluded that the Ministry's disclosure was not in compliance with section 42(b) of the Act. However, in reaching this conclusion, we recognize that the Ministry may have believed that as a result of the complainant's publicly-declared views in this area, not only through newspaper articles but also in letters written to MPPs, the Ministry would be permitted to discuss the matter publicly. But the Ministry disclosed a considerable amount of additional information -- the complainant's personal information which the Ministry had in its possession as a result of his personal dealings with the Ministry.

While parts of the personal information disclosed by the Ministry were similar to the information disclosed in the complainant's letter to the MPPs and the newspaper articles, it is our view that it could not be said that the complainant had identified the personal information contained in the Minister's letter "in particular", nor "consented" to its disclosure. Thus, it is our view that the Ministry's disclosure was not in compliance with section 42(b) of the Act.

The Ministry also submitted that the disclosure might "reasonably have been expected" by the complainant so as "to bring it within the phrase 'consistent purpose' in clause 42(c) of the Act." Section 42(c) of the Act permits the disclosure of personal information:

for the purpose for which it was obtained or compiled or for a consistent purpose;

In other words, the disclosure must either be for the same purpose for which the personal information was collected or for a purpose that was consistent with that purpose. Section 43 of the Act further provides that:

Where personal 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 one of the purposes for which the Ministry had compiled or obtained the complainant's personal information would have been to maintain administrative records/correspondence files about the complainant and his property, which would include information about when he had acquired his property, the acreage taxes he had paid prior to 1991, his mining rights, etc.

The Ministry stated that the Minister's letter was not written in response to any particular inquiry from the Liberal MPP, and no specific purpose was provided for the disclosure of the complainant's personal information. However, in her letter, the Minister explained that she was aware that the complainant had sent the Liberal MPP a letter soliciting his support for the private member's bill and that she "would like to take this opportunity to bring you up to date on the details of our mining tax and the issue that is of concern to (the named complainant)."

The Minister's letter, however, included not only the details of the mining tax and the general issue of the intent of the legislation which was the object of the complainant's concern, but also gave specific information about the complainant and his property: when he had purchased it, whether he had engaged in any mining activities; that he did not want the mining or mineral exploration sector to be allowed on his land, etc. (See details given under issue A).

Although the complainant had disclosed some personal information in his letter that was similar to the personal information disclosed by the Minister, as previously noted, the complainant contended that the personal information disclosed by the Minister was about a separate matter which was not relevant to the issue he had raised, and which he had taken care not to introduce in his letter to the MPPs.

Having carefully considered both the Ministry's submissions and the complainant's submissions, it is our view that the complainant could not have "reasonably expected" that the specific details collected by the Ministry for its files about him, his property, and his experiences with the

Ministry, would subsequently be disclosed in this manner (through the Minister's letter to the MPP).

Therefore, it is our view that the Ministry's disclosure of the complainant's personal information for the purpose of updating the Liberal MPP on the mining land tax and the complainant's general concern could not be said to have been for a "consistent purpose." Thus, the Ministry's disclosure was not in compliance with section 42(c) of the Act.

We have also examined the other provisions of section 42 of the Act and found that none applied in the circumstances of this case.

Conclusion: The disclosure of the complainant's personal information was not in compliance with section 42 of the Act.

OTHER MATTERS

In its submissions to our draft report, the Ministry stated that while we were correct in saying that the Minister's letter was not written in response to the Liberal MPP, it was, however, written in reply to inquiries and requests from numerous MPPs seeking information about the same subject matter. However, no evidence in support of the existence of such inquiries was provided to us. In any event, this information would have had no impact on our conclusion regarding the unauthorized disclosure of the complainant's personal information.

In its submissions, the Ministry also raised the issue of whether section 37 of the Act was applicable to the personal information disclosed in this case since, "it deals with the personal information in records at a land registry office (ownership of land, date of acquisition, size of parcel) or in news paper (sic) articles which were and continue to be available to the public through many public libraries ..." If section 37 applied, then the privacy protection afforded by Part III of the Act would not be applicable.

In his submissions, the complainant also addressed this matter. He stated that "the information was available to no one outside of the Ministry." With respect to the taxes he had paid, the complainant stated that, in his view, "it would be impossible for an outsider to find out that I had paid a tax prior to 1991 or even to suspect that I had paid a tax at that time, unless they were told by the Ministry. Anyone who set out to find out if I was liable for such a tax ... would determine that there was no tax applicable on the property ... The land title information in the land registry office would provide no information on a superficial examination ... Only the Ministry knew that the tax had been levied."

Section 37 of the Act states that:

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, if applicable, section 37 excludes personal information from the privacy provisions of Part III of the Act only if the information in question is held by the institution maintaining it for the express purpose of creating a record available to the general public. **Other**

institutions cannot claim the benefit of the exclusion for the same personal information unless they, too, maintain the information for the purpose of making it available to the general public. In our view, this interpretation is not only reasonable, but also in keeping with one of the fundamental goals of the Act, namely "to protect the privacy of individuals with respect to personal information about themselves held by institutions." In the circumstances of this case, it cannot be said that the Ministry was maintaining the complainant's personal information (that was later disclosed in the Minister's letter) specifically for the purpose of creating a record available to the general public. Accordingly, section 37 of the Act did not apply.

However, even if a broader interpretation of section 37 were adopted, it would still not be applicable to much of the personal information disclosed in this case, such as, the information about the complainant not having engaged in any mining activity on his property, or any other information about the complainant's personal dealings with the Ministry.

Conclusion: Section 37 of the Act was not applicable.

CONCLUSIONS

- The information was "personal information" as defined in section 2(1) of the Act.
- The disclosure of the complainant's personal information was not in compliance with section 42 of the Act.
- Section 37 of the Act was not applicable.

RECOMMENDATION

In our draft report, we recommended that the Ministry take appropriate steps such as to remind all officials and staff of the requirements of the Act, in order to ensure that personal information is not disclosed except in compliance with the Act.

The Ministry has responded that it accepts this recommendation and has taken the necessary steps towards its implementation. Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

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

September 13, 1994

Date

POSTSCRIPT

In his submissions to the draft report, the complainant requested that an additional recommendation be made to require that, "the Ministry release to me copies of all documents within the Ministry and sent from the Ministry ... along with an identification of all recipients of the correspondence or communications." The Act provides the complainant with the means to make an access request to the Ministry for the desired information. The Ministry may, however, wish to provide the complainant with the information he seeks, in the absence of a formal access request, ensuring, however, that any release of information is in compliance with the Act.
