



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

INVESTIGATION REPORT

INVESTIGATION I94-052P

MINISTRY OF ECONOMIC DEVELOPMENT AND TRADE

December 7, 1994



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Economic Development and Trade (the Ministry).

The complainant had applied for a loan under the "New Ventures" program which is administered by the Ontario Development Corporation, an agency of the Ministry. Under the program, personal loans are provided, up to a certain maximum, for eligible small businesses. Applicants are required to complete an application form before the Ministry can process the request for a loan. The application form asks the applicant to give his/her Social Insurance Number (SIN).

The complainant objected to the Ministry's collection of her SIN on the application form and complained that the collection 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 complainant's SIN "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the Ministry's collection of the complainant's SIN in compliance with section 38(2) of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the complainant's SIN "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,

- (c) any identifying number, symbol or other particular assigned to the individual,

It is our view that the SIN is information which meets the requirements of paragraph (c) of the definition of "personal information", in section 2(1) of the Act.

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

Issue B: Was the Ministry's collection of the complainant's SIN in compliance 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**. [emphasis added].

The Ministry submitted that its collection of the SIN was necessary to the proper administration of a lawfully authorized activity. In support of its position, the Ministry stated that the Development Corporations Act, R.S.O. 1990, c.D. 10, s.12 and 13 and the Ministry of Industry and Trade Act, R.S.O. 1990, c.M. 27, s.3 and 6 provide for the creation and administration of programs such as the New Ventures program.

We examined the legislation cited. Section 12 of the Development Corporations Act sets out the objects of development corporations which include the "provision of financial assistance by loan..."

Section 13 sets out the powers of development corporations which include the lending of "money to a person carrying on any industrial undertaking in Ontario..."

Sections 3 and 6 of the Ministry of Development and Trade Act provides for the promotion of the establishment and growth of industry and trade in Ontario; the development and administration of programs as appropriate; and the provision of financial assistance and incentives.

It is our view, therefore, that the administration of the New Ventures program is a "lawfully authorized activity" within the meaning of section 38(2) of the Act.

The Ministry stated that in order to be eligible for assistance under the New Ventures program, applicants must meet certain criteria. The two criteria of particular importance are 1) the applicant must be either a Canadian citizen or a landed immigrant and 2) he/she cannot have received previous assistance under the program.

The Ministry submitted that by verifying the authenticity of an applicant's SIN (through a mathematical formula), program staff are able to confirm that the applicant is either a Canadian citizen or a landed immigrant.

The Ministry also stated that the authenticated SIN is then used to verify that the applicant has not previously been granted a New Ventures loan. The applicant's SIN is checked against existing SIN information in the program's data bases. The Ministry submitted that no other information collected from the applicant is sufficiently unique to allow the Ministry to ensure that an applicant has not already received assistance.

It is our view that an applicant's submission of a valid SIN would not necessarily be verification that he/she is a Canadian citizen or a landed immigrant. We are not persuaded that the SIN is necessary for this purpose, as other documentation such as a birth certificate, citizenship papers, a landing record etc. could be used to verify such status.

We accept, however, the Ministry's position that the SIN is necessary for the purpose of verifying that an applicant has not previously received assistance under the New Ventures program. Thus, it is our view that the Ministry's collection of the complainant's SIN for this purpose was necessary to the proper administration of the New Ventures program. Therefore, the Ministry's collection of the complainant's SIN for this purpose was in compliance with section 38(2) of the Act.

Conclusion: The Ministry's collection of the complainant's SIN for the purpose of verifying if she had received a previous loan under the New Venture program was in compliance with section 38(2) of the Act.

OTHER MATTERS

Notice of Collection

Section 39(2) of the Act states that:

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 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.

During the course of our investigation, we examined the application form for a loan under the New Ventures program. The application form provides the following notice:

Any personal information contained in this, or any subsequent forms attached or forwarded at a later date, is received under the authority of Section 12 of the Development Corporations Act, R.S.O 1980, C.117 as amended, and Sections 3, 6, & 11 of the Ministry of Industry and Trade Act, S.O. 1982, C.31 and will be used to provide a data base of borrowers registered in the New Ventures loan program, to ensure that borrowers receive only one loan and that statistical information on the program is recorded.

It is our view that the notice on the application form satisfies sections 39(2)(a) and (b) but not section 39(2)(c) of the Act.

Conclusion: The Ministry did not provide proper notice of its collection, in compliance with section 39(2) of the Act.

SUMMARY OF CONCLUSIONS

- The complainant's SIN was personal information, as defined in section 2(1) of the Act.
- The Ministry's collection of the complainant's SIN for the purpose of verifying if she had received a previous loan under the New Ventures program was in compliance with section 38(2) of the Act.
- The Ministry did not provide proper notice of its collection, in compliance with section 39(2) of the Act.

RECOMMENDATIONS

We recommend that the Ministry:

1. collect the SIN only for the purpose of verifying that an applicant has not previously received a loan;
2. amend the notice on the application form to ensure that it complies with section 39(2) of the Act.

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 recommendations.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

December 7, 1994

Date