



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

INVESTIGATION REPORT

INVESTIGATION I95-102P

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

January 23, 1997



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INTRODUCTION

Background of the Complaint

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

Since October 1995, Ministry income maintenance workers had used a "Residing With A Spouse" questionnaire (the questionnaire) to determine welfare and family benefits eligibility under amendments to the Regulations of the General Welfare Assistance Act (the GWA) and the Family Benefits Act (the FBA). These amendments had eliminated the "grace" period of three years where there was a co-resident of the opposite sex, and changed the factors to be considered in determining whether there was such a "spouse".

The complainant, a Member of Provincial Parliament acting on behalf of members of an interest group expressed concerns about the collection of social assistance recipients' personal information in the questionnaire. The complainant asked for a finding on whether the Ministry's collection of the personal information in the questionnaire was in compliance with 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) Was the Ministry's collection of the personal information in compliance with section 38 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 states 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,

- ...
- (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 questionnaire was "to be used where residency has been established and spousal status has yet to be determined" and consisted of three sections: "Section A - Financial" with 24 questions, "Section B - Social/Familial Interdependence/Mutual Support" with 34 questions, and "Section C - Complete Only If There Are Children In The Home" with 18 questions.

The information requested on the questionnaire included: the name of the applicant/recipient, the name of the co-resident, as well as the co-resident's date of birth, occupation, employer, position and length of employment. It also asked for information about bank accounts, credit cards, leases, rent and accommodation costs; the name of the applicant/recipient's life insurance beneficiary; whether the applicant/recipient attended a church, temple or synagogue with the co-resident; if the applicant/recipient and co-resident entertained together; and what the applicant/recipient's children called the co-resident etc.

It is our view that the information requested on the questionnaire met the requirements of paragraphs (a), (b) and (h) of the definition of "personal information" in section 2(1) of the Act.

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

Issue B: Was the Ministry's collection of social assistance applicants/recipients personal information in compliance with section 38 of the Act?

Section 38(2) of the Act sets out the circumstances under which an institution under the Act can collect personal information. This section 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.

The Ministry submitted that it had authority under the FBA and the GWA "to collect information relevant to determining the eligibility of applicants, recipients and their dependants." The Ministry stated that "people only qualify for social assistance as sole-support parents or single people if they are not residing in the same dwelling place as a person who qualifies as a spouse, as defined in the Family Benefits and GWA regulations." Accordingly, inquiries were made to determine the nature of the relationship between two people residing in the same dwelling place. The questionnaire asked for information "which is directly relevant to the criteria in the definition of 'spouse' in social assistance regulations."

The Ministry further submitted that a determination of “spouse” may be made, regardless of the length of time that two individuals of the opposite sex have been together.

The Ministry appeared to be relying on the “expressly authorized by statute” condition of section 38(2) of the Act to collect personal information on the questionnaire. We, therefore, examined the applicable sections of the FBA and the GWA and their Regulations.

Section 11 of the FBA states:

The Director shall,

- (a) receive applications for benefits; and
- (b) in accordance with this Act and the regulations,
 - (i) **determine whether any person is entitled to or eligible to receive a benefit,**
 - (ii) where an applicant is so entitled or eligible, determine the amount of the allowance or other benefit and direct provision thereof, and
 - (iii) from time to time vary the amount or benefit so determined.

(emphasis added)

Section 12 of the FBA states:

Subject to section 13, the Director may refuse to provide or may suspend or cancel a benefit where,

- (a) **the applicant or recipient is not or ceases to be entitled thereto, or eligible therefor, under this Act or the regulations;**
- (b) the applicant or recipient is absent from Ontario;
- (c) **the applicant or recipient fails to provide to the Director or the Director's representative, including a field worker, the information**
required to determine initial or continuing entitlement to or eligibility for a benefit or the amount of an allowance; or
- (d) any other ground for refusal, suspension or cancellation specified in the regulations exists.

(emphasis added)

Section 7 of the GWA states:

(1) A municipality shall provide assistance in accordance with the regulations to any person in need who resides in the municipality and **who is eligible for such assistance.**

(2) A municipality may provide assistance in accordance with the regulations to any other person who resides in the municipality and **who is eligible for such assistance.**

(emphasis added)

Section 10(2)(a) and (c) of the GWA states:

A welfare administrator may refuse to provide or may suspend or cancel assistance under this Act where,

(a) **the applicant or recipient is not or ceases to be entitled thereto or eligible therefor under this Act or the regulations;**

...

(c) any other ground for refusal, suspension or cancellation specified in the regulations exists.

(emphasis added)

“Spouse” is defined in section 1(1) of Regulation 366 under the FBA and in section 1(1) of Regulation 537 under the GWA as follows:

"spouse" means,

...

(d) a person of the opposite sex to the applicant or recipient who is residing in the same dwelling place as the applicant or recipient if,

(i) the person is providing financial support to the applicant or recipient,

(ii) the applicant or recipient is providing financial support to the person, or

(iii) the person and the applicant or recipient have a mutual agreement or arrangement regarding their financial affairs, and

the social and familial aspects of the relationship between the person and the applicant or recipient amount to cohabitation.

The phrase “expressly authorized by statute” in section 38(2) of the Act requires either that specific types of personal information collected be expressly described in the statute, or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation under the statute; i.e., in a form or in the text of the regulation. Having carefully considered the applicable legislation, it is our view that neither the FBA nor the GWA, nor their Regulations specifically provided for the Ministry’s collection of the personal information on the questionnaire. Therefore, the Ministry’s collection was not “expressly authorized by statute” within the meaning of section 38(2) of the Act.

We next considered whether the Ministry’s collection of personal information on the questionnaire was “necessary for the proper administration of a lawfully authorized activity” within the meaning of section 38(2) of the Act.

In our view, the activity of social assistance administration, including the determination of eligibility, is “lawfully authorized” under sections 11 and 12 of the FBA and sections 7 and 10(2) of the GWA. In the circumstances of this case, the Ministry was determining whether applicants/recipients were residing with a “spouse” within the meaning of the FBA and GWA Regulations in which case, they would not be considered to be “a single person” or “sole parent” for social assistance purposes.

The Ministry was, thus, required to determine if there existed any “financial support” or a “mutual agreement or arrangement” between the co-resident and the applicant/recipient, and if the “social and familial aspects” of their relationship amounted to “cohabitation.”

In our view, in order to make such a determination, it was “necessary” for the Ministry to collect personal information under the three sections of the questionnaire, and that in collecting this personal information, it was necessary to ask questions of a highly sensitive personal nature. We understand that the answers were considered in their totality as an “aggregate” for the purpose of creating a “profile” to help make an assessment of eligibility. It would be difficult to determine the relevance of each individual question in isolation since their value lay in the total picture created regarding eligibility for benefits.

It is, therefore, our view that the Ministry’s collection of personal information, was “necessary to the proper administration of a lawfully authorized activity”, i.e., the determination of eligibility for benefits, in compliance with section 38(2) of the Act.

We note, however, that some questions on the questionnaire were broadly worded and could have inadvertently elicited unnecessary “third party” information. For example, question 4, “Can anyone else withdraw money from your bank accounts? Does anyone else?” and question 8a, “Do you have life insurance? If so, who are the beneficiaries of your life insurance?”

In our view, if these questions were intended to establish whether the co-resident was the party who could withdraw money or was the beneficiary, then the questions should have specifically asked: “Can the co-resident withdraw money from your bank accounts?” and “Is the co-resident a beneficiary of your life insurance?”

Conclusion: The Ministry's collection of applicant/recipient personal information on the questionnaire was in compliance with section 38 of the Act.

OTHER MATTERS

Indirect Collection

Section 39(1) of the Act sets out the conditions necessary for indirect collection under the Act:

Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 42 or under section 32 of the Municipal Freedom of Information and Protection of Privacy Act;
- (c) the Commissioner has authorized the manner of collection under clause 59(c);
- (d) the information is in a report from a reporting agency in accordance with the Consumer Reporting Act;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute.

If personal information about a co-resident such as his/her name, date of birth, employer, occupation etc. is obtained from someone else, for example, from the applicant/recipient, this would represent an "indirect collection."

In the "Note to Staff" about the questionnaire, Ministry staff are advised that "At the end of the Questionnaire, there is a place for the client to sign his/her name. Please make sure that the client has been given the opportunity to look over the document before signing." However, there is no provision for the co-resident to sign, and thus give consent to the indirect collection of his/her information.

We have examined the provisions of section 39(1) and are of the view that none would apply to permit the indirect collection of the co-resident's personal information on the questionnaire.

Further, we note that an applicant for social assistance for the purposes of eligibility is required to sign a "Form 3 Consent to Disclose and Verify Information" consenting to the collection of information about the applicant and his/her spouse, where the spouse has joined in the consent. The Ministry confirmed, however, that a co-resident would not be required to sign Form 3 until spousal status had been confirmed, and only if the "spouse" was a beneficiary of benefits. In our view, where the co-respondent was not a beneficiary, the collection of his/her personal information would not be covered by the consent in Form 3.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Ministry's collection of applicant/recipient personal information in the questionnaire was in compliance with section 38 of the Act

RECOMMENDATIONS

We recommend that:

1. When it next drafts its questionnaire, the Ministry should ensure that wherever applicable, questions are worded specifically with reference to the co-resident, thereby preventing the unnecessary indirect collection of "third party" personal information.
2. The Ministry takes steps to ensure that personal information is collected in compliance with section 39(1) of the Act. For example, the questionnaire could also request the signature of the co-resident as consent to the collection of his/her personal information.

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: _____
Ann Cavoukian, Ph.D.
Assistant Commissioner

January 23, 1997 _____
Date
