
PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. PC-020054-1

Ministry of the Attorney General

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MEDIATOR: Maria Tzimas

INSTITUTION: Ministry of the Attorney General

SUMMARY OF COMMISSIONER INITIATED COMPLAINT:

On November 14, 2002, the Office of the Information and Privacy Commissioner/Ontario (the IPC) received a letter from the Freedom of Information Coordinator of the Ministry of the Attorney General (the Ministry) regarding the theft of a laptop computer and two Crown Briefs from the car of an Assistant Crown Attorney from Durham Region.

On the basis of this letter, the IPC initiated a privacy complaint under the Freedom of Information and Protection of Privacy Act (the *Act*).

Particulars Concerning the Incident

The Ministry agreed to conduct an internal investigation into the circumstances surrounding the theft and to provide the IPC with a written report. The Ministry's report set out the following information and conclusion in relation to the incident.

On September 8, 2002 an Assistant Crown Attorney in the Durham Region was returning home from a weekend away. The Assistant Crown Attorney parked the car and her spouse proceeded to empty out the contents of the vehicle. The spouse did not see the laptop computer and two Crown Briefs that were tucked under the front driver's seat. Later that night the car was broken into and the laptop and two Crown Briefs were stolen from the car. A list of defence lawyers and their office numbers also went missing. This document is publicly available from the Durham Courthouse. To-date, none of the stolen items have been recovered.

The Ministry advised that the laptop computer was password protected and that there was no information stored on the hard drive. As for the Crown Briefs, the Ministry explained that they pertained to adult offenders and there were no publication bans made in connection with the two files. The Ministry also advised that the first Crown Brief contained the name, home address and telephone number of the accused as well as that of a witness and the victim of the offence. The second Crown Brief related to a breach charge and contained the name, date of birth, address, and telephone number of the accused.

The Ministry took steps to notify individuals whose personal information was contained in the Crown Briefs. Specifically, with respect to the first Crown Brief, the police officer in charge of the investigation that was the subject of the Crown Brief notified counsel for the accused by telephone and advised him of the circumstances surrounding the theft of his client's personal information. The police officer called the witness and victim and notified them of the theft of their personal information.

With respect to the second Crown Brief, the Ministry advised that steps were taken to have the police officer that investigated the offence that was the subject of the Crown Brief notify the accused of the theft of his personal information. However, the Ministry was unable to confirm whether the police officer was successful in notifying the accused and on April 7, 2003 a letter was sent to this affected party from Counsel to the Director of Crown Operations Central East Region. In this letter, the affected party was advised of the theft and the fact that the investigation of the theft remains ongoing.

The Ministry concluded that it was the intent of the Assistant Crown Attorney to remove the laptop computer and Crown Briefs from the vehicle but that unfortunately the spouse did not see these items underneath the front seat of the vehicle. The Ministry's policy for transporting confidential information requires that items be locked securely in the trunk of a vehicle if they must be left there. The Ministry also concluded that the policy as it relates to the storage of information on the computer was complied with.

DISCUSSION:

The following issues were identified as arising from the investigation:

Issue A: Is the information "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act 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,
- (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 where 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 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;

As noted in the Ministry's report, a laptop computer and two Crown Briefs were stolen from the Crown Attorney's vehicle. The laptop computer did not contain any information and was password protected. In view of the fact that the laptop computer did not contain any information, it will not be discussed further in this report.

The Ministry also made reference to a document containing a list of defence lawyers and their office numbers. Since it appears that this document did not contain any personal information, its contents will also not be discussed further in this report.

As for the two Crown Briefs, the Ministry confirmed that they contained information relating to four individuals in total, including the names, home addresses, telephone numbers, and/or dates of birth.

I find that the information contained in the Crown Briefs is clearly personal information as defined in one or more of the subsections of section 2(1) of the *Act* as set out above. The Ministry does not dispute this finding.

Issue B: Was the disclosure of the "personal information" in accordance with section 42 of the *Act*?

Section 42 of the *Act* sets out a number of circumstances under which an institution may disclose personal information. Clearly, in situations where there has been a theft of personal information, none of these circumstances apply. The disclosure, therefore, was not in accordance with the *Act*.

Additional Comments

A previous IPC investigation report dated April 22, 2003 (PC-020035-1) dealt with an investigation involving the theft of two vehicles belonging to a Crown Attorney where the trunk of one of the vehicles contained a videotaped witness statement as well as other documents relating to a criminal investigation. As a result of this investigation, the IPC recommended that the Ministry revise Part B of its Policy on Confidential Information with respect to the procedures for transporting confidential information to include measures for safeguarding

material and ensuring the protection of personal information overnight. Specifically, it was recommended that Ministry employees be advised against leaving materials in locked vehicles overnight.

In the circumstances of this incident, while it is acknowledged that it was the intent of the Assistant Crown Attorney to remove all materials from her car and not leave them there overnight, following through with the recommendation contained in IPC report PC-020035-1, as described above, will help minimize such incidents in the future.

CONCLUSION:

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

1. The information in question was personal information as defined in section 2(1) of the *Act*.
2. The disclosure was inadvertent as it was caused by the theft of materials contained in an Assistant Crown Attorney's car, which contained the personal information in question.

In light of the actions taken by the Ministry with respect to this matter and in the circumstances of this case, no further action is necessary.

June 26, 2003

Maria Tzimas
Mediator