
PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-030034-1

City of Toronto

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MEDIATOR: **Warren Morris**

INSTITUTION: **City of Toronto**

SUMMARY OF COMMISSIONER INITIATED COMPLAINT:

The Information and Privacy Commissioner/Ontario (the IPC) received a complaint from an anonymous source. The complaint related to questions asked of social assistance recipients in a survey by a private polling firm hired by the City of Toronto (the City). The complainant expressed concern about the confidentiality of personal information. The IPC contacted the City's Corporate Access and Privacy Office (CAP) to obtain more information. Although the CAP office had previously been unaware of the survey, it was able to confirm that the City provided personal information to a private polling firm in order to conduct a survey relating to the Ontario Works (OW) program.

On the basis of this information, the IPC initiated a privacy complaint in regard to the disclosure, collection and use of personal information associated with the survey of single parent families receiving benefits under the *Ontario Works Act* (the *OWA*).

Particulars of the Survey

According to the City, a previous study of single parents on social assistance had been conducted in 1998. The City stated that there was a need for more current information, given the amount of time that had elapsed and the significant changes that have taken place in the *OWA*.

On May 29th, 2003, Toronto Social Services (TSS), the City department that delivers OW on behalf of the City and the Ministry of Community and Social Services, issued a Request for Proposal for the research services to conduct a study of single parents in the OW program. The successful proponent was to conduct a telephone survey of a representative sample during the late spring and early summer of 2003. On July 24, 2003 the contract to conduct the survey was awarded to a private polling firm (the "polling agent"). On July 29, 2003 the polling agent

agreed to the terms of reference detailed in the original Request for Proposal and also signed a Data Sharing Agreement prepared by the City's TSS staff.

From the City's "Administrative Database" containing approximately 20,000 OW participants that fit the criteria (i.e. single parents on OW for more than one month with a telephone number and fixed address on record), a random sample of 3,000 single parents was selected to achieve a target of 800 completed surveys. The names, addresses and phone numbers of the 3,000 single parents selected were saved to a separate computer file (the "Contact Information File") along with a randomly generated unique four-digit identifier for each. This identifier would be used to allow TSS to extract demographic information already on file to avoid placing an unnecessary burden on participants to provide information already in the possession of the TSS. The TSS had created a separate computer file (the "Demographic File") containing the age, gender, number of children, age of children, length of time on OW, as well as the corresponding unique four-digit identifier for each of the 3,000 single parents in the random sample. The Contact Information File with the names, contact information and identifier was saved to disk and hand-delivered to the polling agent.

Prior to conducting the survey, the City sent a letter to the 3,000 OW participants indicating the nature of the survey and stating that the survey was voluntary and that the answers would be confidential. The polling agent's survey interviewers were electronically fed the contact information in order to make their telephone calls. Upon contacting an OW client, the computer generated a copy of the survey with the appropriate four-digit identifier stored separately from the contact information. The contact information was then deleted from the interviewer's view. Prior to commencing the survey, the OW participants were given an opportunity not to take part in the survey. The survey results were recorded and stored separately from the name, address and telephone number of those surveyed. Once the 800 telephone surveys were completed, the polling agent was to return the survey data in computer format (the "Survey Results File") to TSS on a compact disk with the respondents identified by the identifier only (no names, addresses or phone numbers). TSS intended to use the identifier to link survey results with the information in the Demographics File, to be used for descriptive and statistical analysis of the survey data. The City's final product would contain the four-digit identifier, the survey results and the demographic information, without any means of connecting the information to any identifiable individual.

The polling agent was to return the disk containing the Contact Information File to TSS and delete any copies that were made. However, several professional associations the polling agent belongs to (the Professional Marketing Research Society – PMRS, and the Canadian Association of Market Research Organizations – CAMRO) require that it retain all survey results data in an electronic archive for a period of seven years. Although the polling agent will maintain the survey results, the City states that this data is the property of TSS and cannot be accessed for any reason without TSS permission. As addressed in more detail below, the polling agent is no longer in possession of the Contact Information File or any of its contents.

The IPC has instructed the City not to link the Survey Results File with the Demographics File until this investigation has been completed, and to proceed with the link only if this investigation concludes that it would not be a breach of the *Act*.

DISCUSSION:

The following issues were identified as arising from the investigation:

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 if they relate to another individual,
- ...
- (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;

In determining whether the information at issue meets the definition of personal information, I will address each of the sets of information individually.

Administrative Database

The Administrative Database contains the information supplied to the City when individuals apply for OW benefits. Such information includes the applicant's name, address, phone number, and various other pieces of information relating to individuals participating in the OW program. I have concluded that the information contained in the Administrative Database is clearly

personal information as set out in subsections (a), (b), (d) and (h) of the definition in section 2(1) of the *Act* set out above. The City does not dispute this conclusion.

Contact Information File

The Contact Information File, which was created by the City from the Administrative Database, contains 3,000 names, phone numbers and addresses of single parents in the OW program along with a unique four-digit identifier for each entry. I have concluded that this is clearly personal information as set out in subsections (c), (d) and (h) of the definition in section 2(1) of the *Act* set out above. The City does not dispute this conclusion.

Demographics File

The Demographics File, also created from the Administrative Database, contains five pieces of demographic information (age, gender, family size, income and length of time on OW) for each of the 3,000 entries, along with the same unique identifiers used in the Contact Information File. In conjunction with the Contact Information File, the information in the Demographics File can easily be linked to identifiable individuals. The information in the Demographics File therefore appears to meet the definition of personal information as set out in subsections (a), (b), (c), (d) and (h) of the definition in section 2(1) of the *Act* set out above.

According to the City, a single TSS staff Research Consultant (the “Research Consultant”) created the Contact Information File on a single TSS computer and saved the file on the computer hard drive. The Contact Information File, temporarily stored on the staff person’s hard drive, was also encrypted. The Research Consultant was the only staff person with access to this computer. The Demographics File was created at the same time as the Contact Information File. Pursuant to the City’s agreement with their polling agent, upon completion of the surveys, the polling agent hand-delivered the floppy disk containing the Contact Information File to the Research Consultant, who physically destroyed the disk. The TSS received written confirmation from the polling agent advising of the permanent deletion of the Contact Information File, including from their sampling records and internal servers. The TSS Research Consultant maintained a back-up copy of the Contact Information File until the completion of the surveys, but once they were completed, the Research Consultant deleted the Contact Information File from his computer. The hard drive’s free memory was repeatedly overwritten using specific software designed for this task. The City states that with the Contact Information File deleted, it is not possible to link the demographic or survey results data to the contact data. Although the City acknowledges that both the Demographics File and the Survey Results File contain the four-digit identifier, neither of the files contain personal identifiers, and the City indicates that deletion of its back-up copy of the Contact Information File renders the data in the Demographics File completely anonymous.

On the issue of whether the unique four-digit identifier renders any individual “identifiable”, the applicable criteria were articulated in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 4987 (Div. Ct.), appeal dismissed [2003] O.J. No. 4627 (Ont. C.A.):

While the records in question do not name the physician, it is common ground that the records may themselves, or in combination with other information, identify the individual even if he or she is not specifically named. The test is accepted as follows:

If there is a reasonable expectation that the individual **can** be identified from the information, then such information qualifies under subsection 2(1) as personal information. Order P-230 [1991] O.I.P.C. No. 21. (emphasis mine)

The test then for whether a record can give personal information asks if there is a reasonable expectation that, when the information in it is combined with information from sources otherwise available, the individual can be identified.

In other words, the question is whether there is a reasonable expectation that individuals whose information appear in the Demographics File **can** be identified by combining it with information from sources otherwise available. As long as the City or the polling agent retained the Contact Information File, there would be a reasonable expectation that the individuals whose information appears in the Demographics File could be identified, and that information would be personal information. This situation could have been avoided. It is my view that the City should not have maintained a copy, nor should it have required the polling agent to return a copy, of the Contact Information File. However, after it received the completed survey, I am satisfied that the City destroyed any copies of the Contact Information File in its possession. I am also satisfied that the polling agent has destroyed its copies of the Contact Information File. Under the circumstances, therefore, I am satisfied that although it was personal information while the Contact Information File remained in existence, the information currently contained in the Demographics File no longer relates to identifiable individuals and therefore can no longer be considered to be personal information.

Survey Results File

The Survey Results File contains client answers to questions asked in the telephone survey along with the unique four-digit identifier that corresponds to that in the Contact Information File and Demographics File. The results of the surveys contain information related to personal finance, education, employment, health, family status, hobbies, opinions or views of the individual survey participants, which would appear to meet the definition of personal information under part (a), (b), (c), (e) and (h) of section 2(1).

For the same reasons outlined under the heading *Demographics File* above, it is my view that as long as the City or the polling agent retained a copy of the Contact Information File, the information in the Survey Results File was about reasonably identifiable individuals and qualified as personal information. However, I am satisfied that the individuals whose information appears in the Survey Results File are no longer identifiable since the Contact Information File has been destroyed, and therefore, the information in the Survey Results File no longer qualifies as personal information.

Was the use of the personal information in accordance with section 31 of the Act?

As mentioned previously, in order to carry out the survey, the City took a sample of single parents receiving OW from their Administrative Database, which I have concluded above contains personal information. The names, addresses and phone numbers of the 3,000 single parents selected were saved to a separate computer file (the "Contact Information File") along with a randomly generated unique four-digit identifier for each. The Demographics File, as described above, was also created from the Administrative Database. These actions by the City are considered to be a *use* of personal information, and such *use* must be in compliance with section 31 of the *Act*.

Section 31 of the *Act* states:

An institution shall not use personal information in its custody or under its control except,

....

- (b) for the purpose for which it was obtained or compiled or for a consistent purpose;

Section 31(b) permits the *use* of personal information for the *original* purpose for which the information was collected or for a *consistent* purpose. On the question of whether a *use* is "consistent", section 33 of the *Act* states that:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure

The City states that the use of the personal information was for a purpose consistent with the purpose for which it was originally obtained. The City cites subsections 41(1) and 41(2) of the *OWA* which state:

(1) Information collected by a delivery agent for the purposes of this Act may be used by the delivery agent and by the Ministry for the purposes of, and in accordance with this Act.

(2) Personal information collected by a delivery agent for the purposes of the Act may be used by the delivery agent and by the Ministry only for the purpose for which it was collected or for a **consistent purpose** or as authorized under this Act, 1997, c.25, Sched.A, s.41. (emphasis added by City)

The City continues by stating the following:

TSS is a duly appointed delivery agent of the Ministry.

Using the clients' personal information to create a "Contact" file for the purpose of conducting the client telephone survey designed to assist TSS to address the multifaceted services and supports that this type of client requires qualifies as a **consistent purpose**.

As noted above, section 31(b) also permits *use* of personal information for the original purpose for which it was obtained or compiled. One of the original stated purposes for which the information in the OW application was "obtained or compiled" was "administering" social assistance programs. In modern public administration, understanding client needs, and planning accordingly, is required for the proper administration of a program such as Ontario Works. I have concluded that the use of personal information to create the contact information and demographics files falls within this original purpose and was therefore permitted by section 31(b) of the *Act*. However, although I am satisfied that conducting the surveys will assist the City in administering the OW program, I have also concluded that the original notice in the OW application is not adequate on its own. OW clients should be made aware, at the outset, that the City may use their personal information to conduct surveys of this nature. Given that the OW application is a form prescribed by provincial regulation, the City should provide an additional notice to this effect and it should accompany the OW application form.

Was the disclosure of personal information in accordance with section 32 of the *Act*?

In order to conduct the survey, the City provided the polling agent with the Contact File, in disk format, containing the names, phone numbers and addresses of 3,000 single parents in the OW program along with a unique four-digit identifier for each entry. This constitutes a disclosure of personal information and such a disclosure must be in compliance with section 32 of the *Act*.

Section 32 of the *Act* states:

An institution shall not disclose personal information in its custody or under its control except,

...

- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

...

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;

Like section 31(b), section 32(c) permits disclosure for the *original* purpose for which the information was collected or for a *consistent* purpose.

Section 33 of the *Act* states:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure.

In its submissions, the City acknowledges that it disclosed personal information to the polling agent. However the City maintains its disclosure of information was in compliance with the *Act* as it only disclosed information that was necessary to facilitate direct contact with the OW client. The City states that, in addition to the notice statement appearing on the OW application form, the TSS staff sent a letter designed to notify the OW clients that the survey would be conducted. The notification letter specifically identified the City's polling agent as being responsible for conducting the telephone interviews and provided a TSS staff contact person and telephone number to call if there were questions. As well, when the polling agent contacted the OW clients, they were informed that their participation in the survey was strictly voluntary and that their answers would be recorded in an anonymous manner. Clients were given an opportunity to decline participation in the survey.

The City cites subsection 32(c) of the *Act* as their authority for the disclosure. The City reiterated that the intent of the survey was to assist it in identifying specific client needs in an effort to enhance service delivery. It is the City's view that program review and service delivery issues are consistent with the overall purpose of administering social assistance benefits, and the OW participants might "reasonably have expected" such a use or disclosure. The City states that the use of the clients' personal information to conduct the survey has a reasonable and direct connection to the original purpose for which the personal information was collected.

During my investigation, the City provided me with a copy of the notification letter sent to potential survey participants, informing them of the purpose for the survey and the name of the polling agent. The letter further stated that the participation "...is voluntary and all your answers are confidential. Your answers will be used for research purposes only. No responses you provide will be shared with any Toronto Social Services office". The letter also provided the name, position and telephone number of the TSS contact to answer questions.

The City's position is that OW clients would reasonably have expected that their personal information may be disclosed to outside contractors for the purpose of conducting surveys. Or alternatively, the City believes that conducting the survey has a reasonable and direct connection to the original purpose for which the personal information was collected.

These very issues were addressed in detail in A Special Report to the Legislative Assembly of Ontario on the Disclosure of Personal Information by the Province of Ontario Savings Office, Ministry of Finance ("POSO"). In POSO, the purpose for which the personal information was collected was for the administering of the clients accounts, whereas the purpose of the disclosure to the polling firm was to assist in exploring the privatization of the function. As such, it was

determined that the disclosure was neither for the original purpose for which the information was obtained or compiled, nor for a consistent purpose. However in this case I am satisfied that the purpose of conducting the survey was to improve program services to OW clients, which is directly related to the administration of, as opposed to the privatization of, the program. As such, I am satisfied that the disclosure of personal information was for the original purpose for which the information was obtained or compiled and conclude that such disclosure was in accordance with section 32(c) of the *Act*.

However, not all the information disclosed to the polling agent was necessary to achieve the purpose that I have found to be authorized under section 32(c) in the circumstances of this case. By definition, only disclosures that are necessary to meet the authorized purpose can be justified under section 32(c). In my view, it is easy to see the necessity of the City providing their polling agent with the name and telephone number of the OW clients, but the City provided no explanation as to why it was also necessary to provide their polling agent with the OW participants' addresses. Therefore, I have concluded that the disclosure of the addresses was not authorized by section 32(c).

Was the collection of information during the survey in accordance with sections 28 and 29 of the Act?

In performing the survey, the City's polling agent asked the selected OW clients a series of questions. As noted previously, the answers were recorded electronically in a computer file referred to as the Survey Results File. I have previously concluded that, as long as it could be matched with the Contact Information File, the information collected in the survey would qualify as personal information. The polling agent and the City both had possession of the Contact Information File at the time of collection, which therefore had to meet the requirements of sections 28 and 29 of the *Act*.

The relevant portions of sections 28 and 29 of the *Act* read as follows:

28 (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.

29 (2) 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.

In addressing section 28(2) of the *Act*, the City relied on the following as their authority to collect personal information:

The Family Benefits Act, R.S.O.1990, cF.2., the Ontario Works Act, 1997, the Ontario Disability Support Program Act, 1997 the Ministry of Health Act, Section 6(2), the Ontario Drug Benefits Act, 1986 and the Income Tax Act, R.S.O. 1985, c.1 (5th supplement) as amended.

To address section 29(2) of the *Act*, the City provided the following submission:

The OW application form is prescribed by a provincial regulation and is not controlled by the City of Toronto.

Individuals applying for Ontario Works (OW) assistance are required to complete the provincial application form entitled: Application for Assistance under the *Ontario Works Act (OWA), Income Support under the Ontario Disability Support Program Act* (see attached Document 9, Application for Assistance under the *OWA*).

The application form includes a “notice of collection” statement that advises the applicant that the information collected on the form will be used for the purposes of:

Administering the Ontario Government social assistance programs;

...

As stated above, section 28(2) of the *Act* prohibits the collection of personal information except in certain circumstances, including where “the collection is expressly authorized by statute” or “necessary to the proper administration of a lawfully authorized activity”. As noted above in my analysis of the “use” issue, one of the stated purposes of the collection set out in the OW application was for “administering” social assistance programs, and in modern public administration, understanding client needs, and planning accordingly, is required for the proper administration of a program such as Ontario Works. On this basis, I am satisfied that the City had the legal authority to collect the personal information it obtained in response to the survey (the “survey results”). Thus I conclude that the collection of personal information was in accordance with section 28(2) of the *Act*.

The survey was a new collection of personal information and notice in accordance with section 29(2) of the *Act* was required. During my investigation, the City provided me with a copy of the letter sent to potential survey participants, informing them of the purpose for the survey and the name of the polling agent. The letter further stated that the participation “...is voluntary and all your answers are confidential. Your answers will be used for research purposes only. No responses you provide will be shared with any Toronto Social Services office”. The letter also provided the name, position and telephone number of the TSS contact to answer questions. However, the letter does not state any legal authority for the collection. The letter is also

misleading because a survey participant would not reasonably expect, nor have any way of knowing that the survey answers they provided to the polling agent would be cross referenced with the five pieces of demographic data contained in the Demographics File. Therefore, in my view, the City has not complied with subsections 29(2) (a) or (b) of the *Act*.

Does Part II of the *Act* apply to the proposed linkage of the Demographics File with the Survey Results File?

During my investigation, the City stated that it intended to link the Survey Results File with the Demographics File by matching the corresponding four-digit identifiers in each file. The City envisioned the end product to be a final single parent database containing the four-digit identifier, the survey results data and the demographics, with no other identifying information.

In their submissions, the City provided the IPC with a written confirmation from their polling agent advising of the permanent deletion of all personal identification fields of the TSS data file (Contact Information File) used in the study, including the deletion from their sampling records, internal servers in their head office and the tele-field offices. The City acknowledged that their TSS staff maintained a back-up copy of the Contact Information File until the completion of the survey. Upon receipt of the Survey Results File, all copies of the Contact Information File were destroyed. I have already concluded that because the City and the polling agent have destroyed all their copies of the Contact Information File, the information in both the Demographics File and the Survey Results File no longer qualify as personal information.

If the Demographics File or the Survey Results file contained personal information, then the proposed link would be a *use* that must meet the requirements of section 31 of the *Act*. In this case, however, since the link has yet to be performed, and the two files no longer contain personal information, Part II of the *Act* generally, and section 31 in particular, do not apply to the proposed link.

Other issues arising from the investigation

Data Sharing Agreement

During my investigation, the City provided me with a copy of the contract between the City and its polling agent titled "Data Sharing Agreement – Re: Ontario Works Demographic Data". In my view the provision relating to the return and disposal of the contact data is deficient. The provision states that the compact disk containing the data provided to the polling agent (the Contact Information File) is to be returned to the TSS and that any copies of it be destroyed. Authority to collect, use or disclose personal information under Part II of the *Act* only extends to activities that are *necessary* to achieve an identified purpose. In accordance with this principle, it would be more appropriate for the agreement to have specified that the Contact Information File be destroyed rather than returned to the City. This would also be more consistent with the assurances of confidentiality in the City's letter of July 25, 2003.

Corporate Access and Privacy office

During my investigation, it became apparent that the TSS did not consult with the City's own Corporate Access and Privacy (CAP) office in regard to the design or implementation of the survey. However, in response to this privacy complaint, it appears that CAP has worked closely with TSS. The IPC encourages the TSS and other departments of the City to consult with CAP on future projects of this nature to ensure compliance with the privacy requirements of the *Act*.

CONCLUSIONS:

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

1. The Administrative Database and Contact Information File contain personal information, as defined by the *Act*;
2. As long as individuals can be identified via the Contact Information File, the Demographics File and the Survey Results File contain personal information as defined by the *Act*. Once the Contact Information File was destroyed, the information contained in the Demographics File and the Survey Results File no longer constitutes personal information as defined by the *Act*;
3. The City's use of the Administrative Database to carry out the survey was in accordance with section 31(b) of the *Act*;
4. The original notice in the OW application is not adequate on its own. OW clients should be made aware, at the outset, that the City may use their information to conduct surveys;
5. The disclosure of personal information from the City to its polling agent was authorized by section 32(c) of the *Act*; however the disclosure of the OW participants' addresses was not justified under that section because it was not necessary in order to complete the survey;
6. The City's collection of survey information was in accordance with section 28(2) of the *Act*;
7. The City has not provided the notice of collection as required by section 29(2) of the *Act*; and
8. Part II of the *Act* does not apply to the proposed linkage of the Demographics File with the Survey Results File.

RECOMMENDATIONS:

1. The City should provide a separate notice to OW applicants with the OW application, advising applicants that the City may use their personal information to conduct surveys;

2. In future, to ensure that all personal information being disclosed falls within the authority of section 32, the City should only disclose personal information that is necessary for the authorized purpose;
3. When conducting surveys, the City should ensure that future notice statements sent to their clients clearly address all three requirements of section 29(2) of the *Act* by providing the legal authority for the collection, the principal purpose for which the personal information is intended to be used, as well as providing the appropriate contact person;
4. When engaging in projects with outside agencies, the City should ensure that future data sharing agreements contain provisions addressing privacy considerations relating to the collection, use and disclosure of personal information in accordance with the *Act*, and not merely the information being shared with the outside agency. The City should refer to *Best Practices for Protecting Individual Privacy in Conducting Survey Research* (particularly Appendix B) and *IPC Practice No. 18 – How to Protect Personal Information in the Custody of a Third Party*. Both of these publications are available on this office's website at www.ipc.on.ca.
5. The City should ensure that its various departments consult the CAP office when engaging in any project potentially involving personal information. It is recommended that this report be circulated to every department head within the City; and
6. It is recommended that this report be distributed to the City's polling agent.

By August 5, 2004, the institution should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Warren Morris
Mediator

May 5, 2004