
PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-030035-1

The Regional Municipality of Niagara

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MEDIATOR: **Frances Soloway**

INSTITUTION: **The Regional Municipality of Niagara**

SUMMARY OF COMMISSIONER INITIATED COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (the IPC) received a complaint from a Member of Provincial Parliament (the MPP), acting on behalf of a constituent, regarding the collection of the constituent's personal information by the Regional Municipality of Niagara (the Region). The MPP stated that the personal information is collected on a form entitled "Father Unknown Questionnaire", (the questionnaire), which is required to be completed on an annual basis, as a condition of receiving social assistance. As a result, the IPC initiated a privacy complaint under the *Freedom of Information and Protection of Privacy Act (the Act)*.

INVESTIGATION AND RESULTS:

In the course of investigating the complaint, I had various discussions with several staff at the Region. The Region provided me with information regarding the creation, purpose and use of the questionnaire at issue in this complaint, including correspondence and copies of the various versions of the questionnaire. The Region also provided a copy of the training manuals, which included information about the procedures and policies and the statutory framework for the program.

As a result, I obtained the following details regarding the use of the questionnaire:

- In 1998 under the *Social Assistance & Employment Opportunities Legislation*, the Province transferred authority to administer social assistance to the municipalities through the *Ontario Works Act (the OWA)*, its Regulations and Directives and the *Ontario Disability Support Program (the ODSP)*, which mandated a Municipal Family Support Program. To assist with the transfer of these responsibilities, the Province provided training to the municipalities on the process of administering social assistance. At these training sessions, staff was provided with a list of questions formulated to elicit information that may lead to the identity of the payor or

alternative source of support. The information provided by the Region indicates that these questions were formalized into a questionnaire, which was entitled, variously as “Putative Father Unknown” questionnaire and “Father Unknown” questionnaire. At the time of this complaint, seven versions of this form were in use.

- The Region explained that under section 14(1) of the *OWA* and section 9(1) of the *ODSPA*, the participants are required to make ongoing reasonable efforts to pursue adequate support from a former spouse, same sex partner or any person who has a legal obligation to provide it to themselves or their dependants. If reasonable efforts are not made, assistance may be reduced or cancelled.
- The intent of the family support function is to assist the participants in obtaining financial resources to which they are entitled for themselves or their children. The Region explained that it was a condition of eligibility that the participant must be making a reasonable effort to obtain compensation or to realize any financial resource to which she may be entitled. Eligibility does not depend on the actual receipt of support payments from the other party but on the reasonableness of efforts made in obtaining support including providing current information and attending court appointments. The role of the Family Support Worker (the FSW) within the statutory framework of the *OWA*, is to be aware of all the potential opportunities for support, and to actively help the participant to identify and obtain that support. In this regard, the FSWs work with the participants to search for and compile information that could lead to locating the payor parent.
- The Region states that the legislative authority for the FSWs to perform this function is contained in O. Reg. 134/98 under the *OWA*, as amended by O. Reg. 456/03, section 65.1(1) which provides:

A family support worker may,

(g) undertake investigations and inquiries necessary to carry out his or her duties under this section; and

(h) collect, use and disclose personal information to carry out his or her duties under this section, in accordance with any agreements entered into under section 71, 72 or 73 of the Act.

- The legislative authority for the FSWs to perform this function is also contained in O. Reg. 222/98 under the *ODSPA*, as amended by O. Reg. 457/03, section 54.1 (g) and (h).
- At the training sessions facilitated by the province, the FSWs were given copies of the questionnaire that the province had been using to assist applicants/recipients of social assistance when the identity of the father was unknown. FSWs were advised that they could customize the questionnaire to best elicit the information needed to

assist the applicant. This resulted in seven different versions of the questionnaire being in use at the time that this complaint was initiated.

- In situations where the father is unknown, the case manager first meets with the participant and asks the questions from the questionnaire. The Region stated that the circumstances of each case dictate whether all the questions are asked in order to elicit the information needed. The file is then assigned to a FSW who also meets with the participant, asks the questions and records the answers on the form. The Region explains that this is done in order to check for consistency in the responses. From that point on, the questionnaire is completed on an annual basis for those participants that remain in the system.
- The Region explains that the questionnaire is used as a “memory aid” for the participant and the onus is on the participant to follow up on the information that is compiled. The questionnaire is used to aid her in identifying and locating the unknown father in order to seek support to which she may be entitled.
- The Region stated that it does not participate in investigative activities to track down the unknown father but does encourage the participant in these activities, in her reasonable efforts to pursue support.
- The Region advised that the questionnaire has proven to be a very effective tool. For example, in December 2003, one FSW noted that 5 out of 6 questionnaires that were completed led to the identity of the father. The Region also reported that in Hamilton, generally, 50 percent of the questionnaires completed led to the identity of the unknown father.
- The Region indicated that where the identity of the father is found, the FSW is also responsible for assisting the participant through the court process for an application for an order of support.
- The Region stated that FSWs are responsible for trying to get support in place within 120 days from the date of application for social assistance. In situations where the father is unknown there are added pressures on this time constraint as FSWs must prove by 120 days from the date of application that there are absolutely no possible avenues to pursue support.
- The Region states that an additional reason for completing the questionnaire is to prepare the participants for court proceedings. The Region indicates that the questions are similar to the questions that may be asked in court, pertaining to paternity, custody, access and support.

Steps taken by the Region When Advised of the Complaint.

- Staff in all Social Assistance and Employment Opportunities Division Offices within the region were notified of the complaint surrounding the use of the questionnaire.

Staff were reminded that any verbal questioning of the participant should be limited to information required for identifying potential sources of support. Staff were also reminded of the Region's obligations under the privacy provisions of the *Act*.

- A review was undertaken of the questionnaires that were currently in place. As mentioned above, through this review, it was discovered that there were seven variations of the questionnaire being used within the Region.
- The Division's offices have been advised to use only the version endorsed by the Region. The Region has provided our office with a copy of the endorsed questionnaire.
- The Region has provided this office with confirmation that the endorsed questionnaire is the only one being used in all the offices. The Province has renamed the questionnaire the *Questionnaire for Situations where Paternity is Not Known with Certainty*. The Province has incorporated the new name in the OW Family Support Manual.
- The Region advised that there is general in-house confidentiality training for all new staff. They also advised that the Region has introduced a general three-hour privacy training, which will be given twice a year in 2004. The Region's intention is to continue with this bi-annual training every year. The corporate wide learning calendar is reviewed on an annual basis. The specific training for FSWs, which addresses the use of the questionnaire, is provided in an annual FSW conference. In addition, the Ontario Municipal Social Services Association (OMSSA) provides a three-day core curriculum training and orientation for new FSWs and their supervisors.
- The Region advised that a new FSW training manual, which includes the endorsed renamed questionnaire, was issued in January 2004.
- Both supervisors in their coaching role, and frontline staff in their client & community interactions, have received information about the complaint and it has added a further element of caution in many of the Region's business practices.

The Questionnaire

I have reviewed the questionnaire and I note that the information requested includes:

- the name of the unknown father, description of the father, where she met him, his place of work.
- names and addresses of possible contacts that were with her or friends who may know the father.
- the length of the relationship, when she told the father she was pregnant, what attempts she had made to contact the father.

I note also that the questions on the form are asked at the initial interview, at a second interview with the FSW and after that at each annual review, if the participant is still within the system.

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,

information relating to the race, national or ethnic origin, color, 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;

I have reviewed the information requested on the questionnaire and find that it qualifies as information about the participant, the payor/potential payor and other individuals that may be identified in the responses. In my view, this qualifies as the personal information of the

individuals that it relates to under paragraphs (a), (b), (d) and (h) of the definition of personal information above. The Region does not dispute this finding.

Was the collection of the “personal information” in accordance with section 28(2) of the Act?

Section 28(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 Region submitted that the personal information collected in response to the questionnaire is being collected for the purposes of law enforcement and for the proper administration of a lawfully authorized activity. The Region relies on the *Family Law Act*, (the *FLA*), the *OWA* and the *ODSP*, for its statutory authority to collect personal information under section 28(2) of the *Act*.

The *FLA* legislates and provides a statutory framework for support issues. Section 31(1) of the *FLA* states that every parent has an obligation to provide support for his or her unmarried child who is a minor or is enrolled in a full time program of education, to the extent that the parent is capable of doing so. (R.S.O. 1990, c.F.3, s.31 (1); 1997,c.20.s.2)

Section 33(3)(e) of the *FLA* states that an application for an order for the support of a dependant who is the respondent’s spouse, same-sex partner or child may be made by a delivery agent under the *Ontario Works Act, 1997*.

As previously described, the *OWA* mandates a municipal family support program. Part 1, section 14(1) of the *OWA* and Section 9(1) of the *ODSPA* state that a sole support parent must make every reasonable effort to obtain support. Under section 59(1) of the *OWA*, an administrator may designate persons as family support workers to assist applicants, recipients and dependants in taking whatever action is necessary to pursue financial support from persons with a legal obligation to provide it.

As noted above, the Regulations under the *OWA* and *ODSPA* provide that a FSW may “undertake investigations and inquiries necessary to carry out his or her duties under this section”. Those duties include assisting in or undertaking legal proceedings to obtain support (see subsections (b) and (c) of both section 65.1, O. Reg. 134/98 (*OWA*) and section 54.1(1), O. Reg.222/98 (*ODSPA*)). The Region points out that the collection of information and the use of this questionnaire is an important tool in the process to assist the applicant to pursue her rights under the *FLA*. The FSW asks the questions on the form and records the answers as part of this process and therefore collects and uses the personal information obtained in the course of his/her duties.

I have reviewed the relevant sections of the *FLA*, *OWA* and the *ODSP*. Based on all of the above, I am satisfied that the collection of personal information in the questionnaire for assisting in locating a possible source of support was necessary to the proper administration of a lawfully authorized activity. I am satisfied also that given the nature and requirements of the program it was appropriate, in the circumstances, to collect the personal information after the initial application and at the time of the annual review. I conclude therefore that the collection of personal information was in compliance with section 28(2) of the *Act*.

I have reviewed the personal information that is being collected on the questionnaire and in my view, based on the wording of section 28(2), the collection of this personal information should be limited to only that information which is “necessary” to identify and locate the unknown father. I will address this concern in my recommendations below.

Was the manner of collection of the personal information in accordance with section 29 of the *Act* ?

Section 29(1) provides that an institution shall only collect personal information directly from the individual to whom the information relates with the exception of specific circumstances outlined in that section.

The Region acknowledges that it collects personal information indirectly about the payor or potential payor. The Region submits that it has the authority to collect this information because the collection is for the purpose of pursuing support and obtaining a support order through proceedings or possible proceedings before a court or a tribunal.

Section 29(1) of the *Act* sets out the conditions necessary for indirect collection under the *Act*.

- 29.** (1) An institution shall collect personal information only 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 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*;
 - (c) the Commissioner has authorized the manner of collection under clause 46(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 honor 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 or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute.

In the circumstances of the situation, where personal information about a payor or potential payor is collected indirectly for the purposes of a proceeding or a possible proceeding before a court or a tribunal, I am satisfied that the indirect collection of information was in accordance with section 29(1)(f) of the *Act*.

Was notice given by the Region in accordance with section 29(2) of the *Act*?

Section 29(2) of the *Act* requires that notice of collection be given by the institution to the individual to whom the information relates. Section 29(2) reads:

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.

The Region indicates that once a payor is identified, he is given notice of the collection of personal information. This notice is set out in the covering letter sent by the Region to the payor, requesting his financial information. The notice informs the payor of the legal authority to collect personal information, the principal purpose for which it is intended to be used and the title, business address and telephone number of a public official who could answer the individual's questions about the collection. In the fact situation where it is not possible to give notice because the whereabouts and/or identity of the individual are not known at the time of the initial collection of personal information on the questionnaire, it is reasonable for the Region to give notice as soon as the identity and the whereabouts of the payor is ascertained. I am satisfied that the Region does give notice as soon as a payor is identified. I therefore conclude that the Region has complied with the notice requirements of section 29(2) of the *Act*.

CONCLUSION:

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

1. The information in question is the personal information of the applicant, the payor or potential payor and other individuals referred to in the questionnaire as defined in section 2(1) of the *Act*.
2. The collection of personal information on the questionnaire is in compliance with section 28(2) of the *Act*.
3. Completion of the questionnaire on a yearly basis in those situations where the father remains unknown, is in accordance with section 28(2) of the *Act*.
4. The indirect collection of personal information on the questionnaire is in compliance with section 29(1)(f) of the *Act*.
5. Notice is in compliance with section 29(2) of the *Act*.

RECOMMENDATIONS:

1. I recommend that the Region develop a strategy to monitor the use of the questionnaire throughout the Region to ensure that the only questionnaire in use is the endorsed one.
2. I recommend that the Region emphasize that in using the questionnaire, it is of the utmost importance to only obtain information that is necessary to identify and locate the unknown father and to minimize the indirect collection of personal information.
3. I recommend that the Region incorporate training regarding the *Act*, and its relationship to the roles and responsibilities of staff, as part of confidentiality training for all new staff, as well as in the Region's corporate wide bi-annual general privacy training.

By **November 27, 2004**, the institution should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed by: _____
Frances Soloway
Mediator

August 27, 2004
