



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. PC-060004-1

Ministry of Community Safety and Correctional Services



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. **PC-060004-1**

INVESTIGATOR: **Mark Ratner**

INSTITUTION: **Ministry of Community Safety and Correctional Services**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (IPC) received a complaint under the *Freedom of Information and Protection of Privacy Act* (the *Act*) concerning the Ministry of Community Safety and Correctional Services (the Ministry). Specifically, the complainant was concerned that the Ministry's disclosure of information contained in a probation order was inappropriate.

The incident giving rise to this matter was a conversation between a Catholic Children's Aid Society worker (the CCAS worker) and the complainant's probation officer that took place on April 27, 2004. (The probation officer is an employee of the Ministry). Prior to this conversation, the CCAS worker had requested information regarding the contents of a probation order applying to the complainant.

The complainant feels that this conversation, which included a disclosure of the terms of the complainant's probation order, constituted an inappropriate disclosure of his personal information, and contravened the privacy protection provisions 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*?

In this case, the information in question is the terms of the probation order applying to the complainant.

Section 2(1) of the *Act* states, in part:

“personal information” means recorded information about an identifiable individual, including,

...

- (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 this case, the information in question is the complainant’s name, as well as the terms of a probation order applying to the complainant. This information would clearly appear to fit within the definition of personal information set out in section (h) of the definition of “personal information.”

However, one factor that must be considered is the fact that the disclosure that took place was verbal, and was not a disclosure of recorded information as contemplated by the definition of “personal information” set out above.

In previous privacy complaints, the IPC has taken the position that verbal disclosures of personal information are subject to the privacy provisions of Part III of the *Act*, as long as the information in question exists or existed at one time in recorded format. As expressed in previous Investigation Reports, to decide otherwise would facilitate the circumvention of the non-disclosure rules contained in Part III, and would be inconsistent with the purposes underlying the *Act* [see, for example, Investigation Reports MC-980055-1 and MC-020008-1].

Based on this reasoning, in order to determine whether a given disclosure of personal information is subject to the privacy protection provisions of the *Act*, it is necessary to determine whether the information in question exists or existed at one time in recorded format. If so, the information in question would be considered to be “personal information” within the meaning of the *Act*.

In this case, it is clear the information in question does exist in a recorded format – namely, in the complainant’s probation order. As such, I am satisfied that the information in question qualifies as the complainant’s personal information under the *Act*.

Was the disclosure of the “personal information” in accordance with section 42 of the *Act*?

In written materials provided to the IPC, the complainant has stated that this privacy complaint is premised on his concern that:

Catholic Children’s Aid Society may obtain information about the terms and conditions of my probation from my probation officer without my verbal or written consent to do so.

In response to the complaint, the Ministry investigated the circumstances leading up to the conversation between the probation officer and the CCAS worker. Following its investigation into the matter, the Ministry concluded that the probation officer’s actions did not constitute a violation of the privacy protection provisions of the *Act*.

In support of this position, the Ministry stated that:

- The CCAS worker in question had asked the probation officer whether the individual had any conditions in his probation order that would prevent him from working in the City of Toronto, or with children.
- In view of the particular circumstances of this case, and the need for an expeditious response to the inquiry, necessary information concerning the probation order was communicated to the CCAS worker.
- Probation orders (such as the one at issue) are public documents which may be accessed by anyone directly from the courts.

In determining whether the probation officer’s activities constituted a violation of the *Act*, it is necessary to examine the specific statutory provisions at issue.

Section 42 of the *Act* contains a basic prohibition on the disclosure of personal information, but states that personal information may be disclosed where one of a set of statutory exceptions applies. Section 42 of the *Act* states, in part:

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

...

- (b) where 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;

....

In general, a disclosure of personal information is deemed to be permissible under the *Act* where the institution in question can demonstrate that the disclosure is justified under one of the exceptions contained in section 42.

In this case, the complainant has pointed out that he was not contacted and given the option of either providing, or withholding his consent prior to having the probation officer disclose the information to the CCAS worker. The Ministry does not dispute this characterization of the facts in this case.

Because consent was neither sought, nor received, I am satisfied that section 42(b) cannot be used to justify the probation officer's actions.

However, the mere fact that consent was not received does not mean that the Ministry's actions were necessarily inappropriate. As expressed above, if consent is not present, it is necessary to examine the remaining provisions of section 42 to see if the disclosure may be justified.

In this case, the Ministry has taken the position that the probation officer's disclosure was justified under section 42(c) of the *Act*, which permits the disclosure of personal information for the **same** purpose for which it was obtained or compiled or for a **consistent** purpose.

In order to assess the applicability of this provision, it is helpful to look at the role that probation officers play in Ontario's justice system, and the reason why probation officers collect information contained in probation orders.

The website for the Ministry of Community Safety and Correctional Services¹ contains the following information on the role of probation officers and states:

The supervisory role of a probation officer is to:

- prepare reports for courts and other correctional decision makers;
- enforce the probation order; and
- comprehensively assess offenders, make effective case management decisions and determine rehabilitative interventions (e.g., referral to internal or community-based educational, counselling, or treatment programs or services).

This explanation makes clear that the primary duties of probation officers include the enforcement of probation orders and the making of case management decisions. In carrying out these duties, a probation officer will **collect** information relating to the probation order in question.

¹ <http://www.mpss.jus.gov.on.ca/>

With respect to the **disclosure** of the information contained in the probation order, in this instance, the probation officer disclosed information in response to concerns that the complainant was violating the terms of his probation order. In light of specific facts relating to this case, the probation officer made what could be described as a “case management decision” and communicated information relating to the terms of the complainant’s probation order to the CCAS worker.

In this instance, I am satisfied that the purpose of this disclosure (clarifying the terms of the probation order) was consistent with the purpose for which the personal information was obtained or compiled (to enforce the order and make effective case management decisions). As such, I am satisfied that the disclosure in question was in accordance with section 42(c) of the *Act*.

In reaching this decision, I am mindful of the fact that probation orders, as orders of a court, are a matter of public record and are available to any member of the public at the court that originally issued the order. By virtue of the public nature of this information, I am satisfied there is a reduced expectation of privacy relating to the information contained in probation orders. I am therefore of the view that this fact further supports the finding that the disclosure of the information in question to the CCAS worker was not a violation of either the wording, or the spirit of the *Act*.

CONCLUSION:

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

- The information in question qualifies as “personal information” as defined in section 2(1) of the *Act*.
- The disclosure of the personal information was in accordance with section 42(c) of the *Act*.

Original signed by: _____

Mark Ratner
Investigator

July 21, 2006 _____