

Information and Privacy Commissioner,
Ontario, Canada



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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT PC17-9

Human Rights Tribunal of Ontario

August 2, 2018

Summary: The Office of the Information and Privacy Commissioner of Ontario received a complaint alleging that the Human Rights Tribunal of Ontario (the Tribunal) contravened the *Freedom of Information and Protection of Privacy Act* (the *Act*) when it disclosed personal information in a public decision. A complaint was opened to review the Tribunal's collection, use and disclosure of personal information. In this report, I find that the Tribunal's decisions are not covered by the privacy rules in Part III of the *Act* because the information in those decisions is maintained for the purpose of creating a record available to the general public.

Although I find that the Tribunal's decisions are outside the scope of Part III of the *Act*, I recommend that the Tribunal respect privacy data minimization practices and ensure that only the personal information that is necessary in order to achieve the Tribunal's purposes be included in its decisions.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2, 21, 37; *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22, sections 9(1), 20, 25.0.1, 25.1(1); *Human Rights Code*, R.S.O. 1990, c. H.19, section 41.

Orders and Investigation Reports Considered: Order 11, P-230, MC09-56, PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

P-316, P-651, MC09-56, M-387, M-387, P-1364 PC-980049-1, I93-009M, Order P-1316

Cases Considered: *Toronto Star Newspapers Ltd. v. Attorney General of Ontario*, 2018 ONSC 2586, *Germain v. Automobile Injury Appeal Commission*, 2009 SKQB 106 (CanLII), *Prasad v. Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560, 1989 CanLII 131 (SCC),

Canadian Broadcasting Corporation vs. New Brunswick (Attorney General) 1996 3 S.C.R 480, *R. v. Canadian Broadcasting Corporation*, 2010 ONCA 726, *Dagenais v. Canadian Broadcasting Corporation* [1994] 3 SCR 835, *Mentuck v. The Queen* [2001] 3 SCR 442, 2001 SCC 76, *Sierra Club of Canada v. Canada (Minister of Finance)* [2002] 2 SCR 522, 2002 SCC 4, *CBC v Canada (Attorney General)*, 2011 SCC 2(CanLII), *Ocean Port Hotel Ltd v. British Columbia (General Manager, Liquor Control and Licensing Branch)* [2001] S.C.J No. 17, 2001 SCC 52, *Pacific Press v. Canada Minister of Employment and Immigration* (1991), 127 NR 325 (FCA), *Southam Inc. v. Canada (Attorney General)*, [1997] 36 O.R. (3d), *Edmonton Journal v. Alberta (Attorney General)* [1989] 2 S.C.R. 1326

BACKGROUND:

[1] The Office of the Information and Privacy Commissioner of Ontario (the IPC) received a complaint under the *Freedom of Information and Protection of Privacy Act* (the *Act*) relating to the Human Rights Tribunal of Ontario's collection of personal information and subsequent publication of personal information in its decisions. The complainant asserted that the Human Rights Tribunal of Ontario (the Tribunal) contravened the *Act* when its adjudicator included personal information about herself and her mother in a decision and subsequently made the decision available on the Internet.

[2] The complainant is the sibling of the individual, (the "applicant"), who filed an application to the Tribunal which resulted in a hearing and ultimately the above noted decision. According to the complainant, during the hearing process the applicant was not comfortable sharing personal information about the complainant and her mother that was related to the matter, however she was compelled to provide the information by the adjudicator.

[3] Upon completion of the hearing process, the adjudicator issued a publicly available decision on the matter. Decisions of the Tribunal are published on the following legal reporting services: CanLII, which is a public non-profit website that provides free access to court judgments, tribunal decisions, statutes and regulations for all Canadian jurisdictions; Lexis; and the Canadian Human Rights Reporter.

[4] The applicant submitted a request for reconsideration of the decision, which the Tribunal denied. The applicant also submitted a request to the Tribunal for anonymization. This request was also denied.

[5] After the Tribunal denied the applicant's request for anonymization, the complainant filed a complaint with the IPC. The complainant complained that the Tribunal decision contained personal information of herself and her mother, which included highly sensitive medical information and which, in the complainant's view, was unnecessary to determine the outcome of the matter. The Tribunal's decision was also posted on the internet.

[6] The personal information at issue in this matter is contained in the Tribunal decision (the decision) and includes the applicant's name, her mother's age, her mother's primary language, the number of medications her mother was taking, the reason for the medication, the state of her mother's memory and the city the complainant resides in.

[7] The complainant also advised that the personal information is identifiable because the applicant and her mother reside in a small community, the applicant has a unique first name and the complainant, applicant and their mother have a unique last name.

[8] The complainant seeks to remove the personal information of her mother and herself from the decision, as the complainant believes it was unnecessary for the adjudicator to include it to reach the decision and as such, the disclosure was a violation of the *Act*.

INVESTIGATION:

[9] The Tribunal is an administrative tribunal that is established by the *Human Rights Code* (the *Code*) and is authorized to resolve claims of discrimination and harassment brought under the *Code*.¹

[10] If an individual in Ontario believes he or she has faced discrimination and/or harassment in employment, housing, contracts, membership in trade and vocational associations, goods, services and facilities based on a prohibited ground, he or she may file an application to the Tribunal.

[11] The parties involved with an application filed with the Tribunal are offered the opportunity to settle the dispute through mediation. If the parties do not agree to mediation or mediation does not resolve the application, the Tribunal holds a hearing.²

[12] Section 43(1) of the *Code* allows the Tribunal to make rules governing its practice and procedures when dealing with an application of alleged discrimination and/or harassment.

[13] In addition, section 42(1) of the *Code* states that the *Statutory Powers Procedures Act* (the *SPPA*) applies to a proceeding before the Tribunal. The *SPPA* is a procedural statute that provides a standard set of minimum rules for the functioning of most administrative tribunals in Ontario. For the review of this complaint, it is important to note that sections 25.0.1 & 25.1(1) of the *SPPA* allow a tribunal to determine its own

¹ Human Rights Tribunal of Ontario. (2015) HRTO: What we do. Retrieved from <http://www.sjto.gov.on.ca/hrto/what-we-do/>.

² Ibid.

practices and procedures and establish rules governing any such practices or procedures.

[14] The *Code* also requires that if the Tribunal is going to exercise its statutory power of decision-making, the Tribunal has to provide parties an opportunity for a hearing before making a decision on the allegations. Pursuant to the *Code*, the Tribunal has established practices and procedures related to its proceedings and the standards in the *SPPA* apply to such proceedings.

[15] The Tribunal has asserted that it has the authority to hold public hearings and issue public decisions and that the inclusion of personal information in its decisions is not a violation of the *Act*.

[16] As part of my investigation, I requested and received written representations from the Tribunal with respect to this matter. The representations were subsequently provided to the complainant who submitted a written response to the Tribunal's representations.

ISSUES:

[17] The issues raised by the complaint are as follows:

1. Does the information at issue qualify as "personal information" under section 2(1) of the *Act*?
2. Does section 37 of the *Act* apply to the personal information?
3. If section 37 does not apply, was the personal information collected in compliance with section 39 of the *Act*?
4. If section 37 does not apply, was the personal information used or disclosed in compliance with sections 41 and 42 of the *Act*?

DISCUSSION:

Issue 1: Does the information at issue qualify as "personal information" under section 2(1) of the *Act*?

[18] In order to determine whether the Tribunal has complied with the *Act*, it is first necessary to decide whether the information at issue in this complaint is personal information.

[19] The information in question is the applicant's name, the applicant's mother's age, the mother's primary language, the number of medications the applicant's mother was

taking, the reason for the medication, the state of the mother's memory and the city the complainant resides in.

[20] Section 2(1) of the *Act* states:

"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;

[21] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.³

[22] While the published decision does not specifically mention the name of the

³ Order 11.

applicant's mother and the complainant, it does reference the fact that they are the mother and sibling of the applicant who is named in the decision.

[23] The test to determine whether a given record contains personal information is whether it is reasonable to expect that an individual may be identified if the information is disclosed.⁴

[24] Therefore, in this case I must determine whether the complainant and her mother can be identified through the disclosure of the information contained in the published decision. A record may contain personal information where individuals are not mentioned by name but are identifiable by combining information in the record with other available information.⁵

[25] It is my view that, in the circumstances of this complaint, there is a reasonable expectation that the complainant and her mother could be identified through the disclosure of the information in the Tribunal decision.

[26] Given that the applicant's name is available, the uniqueness of the names and the size of the community, it is reasonable to assume that someone reading the decision would be able to identify her mother and sister and connect the information contained in the decision to them.

[27] I also find that the decision contains personal information about, at the very least, the complainant's mother. This information includes her age and medical history, within the meaning of sections 2(1)(a) and (b) of the definition of "personal information" in the *Act*.

Issue 2: Does section 37 of the *Act* apply to the personal information?

[28] Section 37 of the *Act* states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

[29] "This Part" refers to Part III of the *Act*, which sets out provisions for the protection of individual privacy. If section 37 applies to the record, then the privacy provisions in Part III of the *Act* do not apply to personal information contained in the record, as the entire record would fall outside the privacy protections in Part III of the *Act*.

⁴ P-230, MC09-56, Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁵ P-316, P-651, MC09-56, M-387, M-387, P-1364.

Tribunal's Representations:

[30] The Tribunal acknowledged that it is an institution to which the *Act* applies. However, the Tribunal does not believe that the *Act* applies to the decision, which is the record at issue in this complaint. The Tribunal's view is that the open court principle and the Tribunal's ability, pursuant to the relevant legislation, to control its own proceedings, allows it to determine what information is included in its decisions, to make the decision available to the public and to post it on the internet.

[31] The Tribunal explained that the open court principle is a fundamental tenet of the administration of justice and that the open court principle applies to courts as well as other quasi-judicial proceedings such as the Tribunal hearing process. The Tribunal advised that because the open court principle applies, it presumptively guarantees public access to the Tribunal's decisions and the identity of the litigants.

[32] The Tribunal further explained that it can disclose personal information relating to records captured within the scope of the open court principle without the consent of individuals because ensuring the appropriate operation of the open court principle is a necessary component of controlling its processes and fulfilling the Tribunal's quasi-judicial purpose and mandate.

[33] The Tribunal stated that the *Code* and the *SPPA* establish its mandate and role. The *Code* provides the Tribunal with the jurisdiction to exercise the powers conferred on it by or under the *Code* and to determine all questions of fact or law that arise in any application before it, including the determination of the quasi-constitutional rights⁶ arising under the *Code*.

[34] The Tribunal advised that the *SPPA* allows Tribunals to create their own rules and otherwise control their own proceedings, while the *Code* allows the Tribunal to adjudicate and resolve disputes arising under the *Code*. The *Code* requires the Tribunal to develop practices and procedures that offer the best opportunity for a fair, just and expeditious resolution.

[35] Specifically, section 41 of the *Code* allows the Tribunal to adopt procedures to control how an application is processed, heard and decided. As a result, rules have been created that specifically address the public nature of the Tribunal's proceedings, including that hearings are open to the public, that decisions are available to the public and that the Tribunal may make an adjudicative order restricting access to personal information of litigants where it considers it appropriate.⁷

[36] In addition to the above, the Tribunal argues that the open court principle applies to administrative tribunals. The Tribunal explained that it decides quasi-

⁶ *Ont. Human Rights Comm. V. Simpsons-Sears*, [1985] 2 SCR 536, 1985 CanLII 18 (SCC).

⁷ Human Rights Tribunal of Ontario, *Rules of Procedure*, Rules 3.10 - 3.12

constitutional issues in highly adversarial proceedings that are subject to evidentiary and procedural rules similar to court proceedings. The Tribunal advised that it is court-like in its functions and operations and consequently the open court principle applies to its adjudicative activities.

[37] The Tribunal stated that a court in at least one other Canadian jurisdiction found that an aspect of the control of its proceedings includes making decisions about the publication of information about those proceedings.⁸

[38] The Tribunal also noted that in *Germain v. Automobile Injury Appeal Commission*⁹ (*Germain*), the Saskatchewan Queens Bench found that provincial privacy legislation did not prevent a provincial tribunal from exercising control over the publication of its decisions.

Complainant's Representations:

[39] The complainant's position is that Part III of the *Act* does apply to the Tribunal and the decision, the record at issue in this complaint. The complainant believes that the Tribunal should be required to follow the *Act's* rules regarding the collection, use and disclosure of personal information. The complainant noted that the Tribunal is included in the Ontario Regulation 460 Schedule, which identifies those institutions that are subject to the *Act*.

[40] In addition, the complainant believes that the Tribunal should be held to an even higher standard given that the Tribunal deals with sensitive information. The complainant noted that information that is posted on the internet is accessible forever and can cause harm to the reputations of innocent people, in this case third parties who were not a party to the Tribunal application. The complainant believes that the Tribunal should be required to remove the personal information at issue from the decision.

[41] The complainant argues that neither she nor her mother provided consent for their personal information to be included in the decision, they were not parties to the proceeding, and they did not have an opportunity to speak to the personal information which was provided to the Tribunal about them.

[42] The complainant believes that the disclosure of the personal information in the Tribunal decision is a violation of their privacy. The complainant also believes that the inclusion of the personal information unfairly damages the reputation of the complainant as the information implies that the complainant does not support her mother's eldercare needs.

[43] The complainant disagrees that the issue in the complaint should focus on the

⁸ *Prasad v. Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560, 1989 CanLII 131.

⁹ *Germain v. Automobile Injury Appeal Commission*, 2009 SKQB 106 (CanLII) at para 44-46.

open court principle. The complainant advised that her complaint is about the comments made by the adjudicator in the written decision and disclosure of medical information related to the applicant's mother. The complainant noted that public comments and articles written about the Tribunal's decision do not include medical details of the applicant's mother and thus it is apparent to the complainant that those details were not in the public's interest and were not necessary to be included in the decision.

[44] The complainant also believes that the collection of the information by the adjudicator was gathered through an abuse of power by the adjudicator. The applicant was compelled to produce a doctor's note regarding her mother during the hearing process. The complainant believes there should be limitations on what an adjudicator can order from parties.

[45] The complainant advised that the applicant was not comfortable sharing medical information and these concerns were raised with the adjudicator during the hearing process. According to the complainant, the applicant's concerns were not considered.

Analysis:

[46] In order to satisfy the requirements of section 37, the Tribunal must establish that the information in question is "personal information", and that the personal information is maintained by the institution for the purpose of creating a record that is available to the general public.¹⁰

[47] Under "Issue 1" of this report, I have determined that the information in question is personal information for the purposes of section 2(1) of the *Act*.

[48] In this case, there is no dispute that the decision is available to the general public. The Tribunal's decisions are accessible to the public without charge via CanLII. Decisions of the Tribunal can also be found on Lexis and the Canadian Human Rights Reporter.

[49] I will next consider whether the purpose for which the personal information is maintained, is to create a publicly available decision.

[50] The Tribunal's mandate is adjudicating human rights complaints and determining whether there has been a violation of the *Code*. At the end of its hearing process, the adjudicator issues a decision, which sets out and explains the outcome of the complaint.

[51] The *Code* and the *SPPA* allow the Tribunal to develop its practices and procedures and make rules governing any such practices or procedures. Section 9(1) of

¹⁰ PC-980049-1.

the *SPPA* also requires that oral hearings by the Tribunal be open to the public unless the tribunal is of the opinion that:

9(1)(a) matters involving public security may be disclosed; or

(b) an intimate financial, or personal matter or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected person or public interest outweighs the desirability of adhering to the principle that hearings be open to the public.”

in which case the tribunal may hold the hearing in the absence of the public.

[52] Neither the *Code* nor the *SPPA* provide the Tribunal with any specific authority to publish or not publish its decisions.

[53] The Tribunal’s Rules of Procedure state that its hearings are open to the public and all written decisions of the Tribunal are available to the public.¹¹ The Tribunal’s practice direction on hearings states that the Tribunal’s decisions are published on the CanLII website.¹²

[54] The Tribunal also has a practice direction with respect to anonymization.¹³ The practice direction states that the Tribunal can make an order to protect personal or sensitive information of a party or a participant in a Tribunal hearing and that every party or participant has an opportunity to submit a request and have their privacy issues considered.

[55] I accept the Tribunal’s submissions that the open court principle applies to its proceedings. The open court principle is rooted in four main concerns that were summarized in *Edmonton Journal v. Alberta (Attorney General)*:

(1) To maintain an effective evidentiary process; (2) to ensure a judiciary and juries that behave fairly and that are sensitive to the values espoused by the society; (3) to promote a shared sense that our courts operate with integrity and dispense justice; and (4) to provide an ongoing opportunity for the community to learn how the justice system operates and how the law being applied daily in courts affects them.

[56] The first concern is about the accountability of those appearing before decision-makers and not decision-making bodies themselves. Openness at tribunals tends to

¹¹ Human Rights Tribunal of Ontario, *Rules of Procedure*, Rules 3.10 and 3.12

¹² *Practice Direction on Hearings before the Human Rights Tribunal of Ontario*

¹³ *Practice Direction On Anonymization of HRTTO Decisions*

improve the quality of testimony and for that reason is conducive to the pursuit of truth in adjudicative proceedings.

[57] The other three concerns - which the Tribunal describe as oversight of decision-makers, the integrity of the administration of justice, and the educational and democracy-enhancing features of open courts - link the open court principle to the right of freedom of expression guaranteed by section 2(b) of the *Charter*. The Supreme Court of Canada's decision in the *Canadian Broadcasting Corporation vs. New Brunswick (Attorney General)* stated:

The principle of open courts is inextricably tied to the rights guaranteed by s. 2(b). Openness permits public access to information about the courts, which in turn permits the public to discuss and put forward opinions and criticisms of court practices and proceedings.

[58] The interests underlying the open court principle are not absolute and sometimes in order to provide proper administration of justice restrictions on access can occur. However, if such restrictions are applied the restrictions must be consistent with section 2(b) of the *Charter of Rights and Freedoms*.

[59] Although the open court principle refers specifically to courts, it can also apply to tribunals. The courts have commented on the application of the open court principle to quasi-judicial proceedings of tribunals. The decision in *R. v. Canadian Broadcasting Corporation*, found that:

The open court principle, permitting public access to information about the courts, is deeply rooted in the Canadian system of justice. The strong public policy in favour of openness and of "maximum accountability and accessibility" in respect of judicial or quasi-judicial acts pre-dates the *Charter: Nova Scotia (Attorney General) v. MacIntyre*, 1982 CanLII 14 (SCC), [1982] 1 S.C.R. 175, [1982] S.C.J. No. 1, at p. 184 S.C.R. As Dickson J. stated, at pp. 186-87 S.C.R.: At every stage the rule should be one of public accessibility and concomitant judicial accountability" and "curtailment of public accessibility can only be justified where there is present the need to protect social values of superordinate importance".

[Emphasis Added]

[60] The Tribunal argues that the open court principle applies to a tribunal if it is a statutory tribunal, exercises judicial or quasi-judicial functions and involves an adversarial type process that results in decisions affecting rights. The Tribunal argues that this criteria has been developed and applied by the courts and clearly determines that the open court principle can apply to administrative tribunals if they meet the

criteria.¹⁴ The Tribunal states that it meets all of the above criteria, and I agree.

[61] The courts have also considered the issue of the publication of personal information in an administrative tribunal decision. The decision in *Germain* stated that:

The publication of the decisions is in my view incidental and necessary to the proper functioning of this tribunal as it is to many other tribunals with an adjudicative function which consider precedent including courts and it generally assists others who appear before the Commission.

[62] The Court in *Germain* concluded that the administrative tribunal under review had the authority to publish its decisions, including on the internet, despite the absence of statutory or regulatory provisions specifically allowing it to do so.¹⁵

[63] The Court also stated the following, at paragraph 73:

...it seems illogical that members of the public could sit at the hearing and listen to all of the evidence but not have access to the decision of the Commission. The written decision is the last piece of the hearing process. Public access to decisions made by the Commission is important to assist individuals in presenting their claims and understanding the decision-making process of the Commission and to further the principle of public access to adjudicative bodies.

[64] Additionally, in a previous investigation report, I93-009M, the IPC determined that arbitration decisions are the type of public record contemplated in section 37 of the *Act* and that section 37 could be relied on to exclude the arbitration decision from the privacy provisions of Part III of the *Act*.¹⁶

[65] I find that the Tribunal is an administrative tribunal that is given the authority from the *Code* and the *SPPA* to develop its own processes, procedures and rules in deciding applications brought under the *Code*. The Tribunal's processes, procedures and rules provide that the decisions of the Tribunal will be made public unless the adjudicator decides otherwise. The publication of decisions is an aspect of the Tribunal's control over its own process and the information that is included in the Tribunal's decisions is within the adjudicator's discretion in providing reasons for those decisions.

[66] The Tribunal's decision on a matter and its interpretation of the *Code* are of vital interest to parties, party representatives and members of the public who are

¹⁴ *Ocean Port Hotel Ltd v. British Columbia (General Manager, Liquor Control and Licensing Branch)* [2001] S.C.J. No. 17, 2001 SCC 52, *Pacific Press v. Canada Minister of Employment and Immigration* (1991), 127 NR 325 (FCA), *Southam Inc. v. Canada (Attorney General)*[1997] 36 O.R. (3d).

¹⁵ *Germain v. Automobile Injury Appeal Commission*, 2009 SKQB 106 (CanLII).

¹⁶ I93-009M.

considering filing an application, but also to the general community who wish to understand how the Tribunal does its work. The publication of its decisions supports public confidence in the justice system, serves an educational purpose, promotes accountability by the Tribunal for its decision-making, and ensures that the public has the information necessary to exercise the *Charter* right to freedom of expression.

[67] In this context, I find that Tribunal decisions are maintained both in order to provide the parties with the outcome of the decision, and for the purpose of publication.

[68] In light of the above, I find that section 37 is applicable to Tribunal decisions. The personal information in those decisions is maintained for the purpose of creating a record that is available to the general public. Since section 37 applies, the Tribunal's decisions are excluded from the privacy provisions of Part III of the *Act*. Therefore, sections 39 to 42 are not applicable to the circumstances of this complaint.

[69] Since the parties provided their submissions, the Superior Court of Justice released its decision in *Toronto Star Newspapers Ltd. v. Attorney General of Ontario*¹⁷ holding that the open court principle applies to the "adjudicative records" of tribunals filed with or generated by the tribunal as part of its public hearing process.¹⁸ The Court specifically included "the decision of the tribunal and the reasons therefor" within the category of tribunal records accessible to the public under the open court principle.¹⁹

[70] In *Toronto Star*, the Court went on to declare that the application to the Tribunal's adjudicative records of the exemption for personal information at section 21 and related provisions of the *Act* breached the open court principle, and therefore section 2(b) of the *Charter* and, to that extent only, those provisions are of no force or effect. While the Court suspended its declaration of invalidity for a period of 12 months,²⁰ the Court's ruling that the open court principle applies to tribunal decisions and therefore the decisions are not subject to the *Act*, supports the submissions of the Tribunal in this complaint and my analysis, as set out above.

[71] Given that section 37 applies to the Tribunal's decision, I do not need to consider the application of sections 39 to 42 of the *Act* (Issue 3 and 4 above).

[72] In these circumstances, I will refrain from commenting on the complainant's concerns that the Tribunal decision included personal information of the complainant and her mother that was unnecessary to determine the outcome of the matter. However, in keeping with privacy best practices, I recommend that the Tribunal

¹⁷ *Toronto Star Newspapers Ltd. v. Attorney General of Ontario*, 2018 ONSC 2586.

¹⁸ This report was initially written prior to the release of the Court's decision in the *Toronto Star* case. That decision supports the conclusion I have reached in this report.

¹⁹ *Ibid.* at paras. 7, 131. The Court stated that its ruling applied to the records listed at s. 20 of the *Statutory Powers Procedures Act* where the reference to "the decision of the tribunal" appears at s. 20(f).

²⁰ In order to give the Legislature to amend *FIPPA* to make it constitutionally compliant.

continue to apply data minimization principles in the drafting of its decisions and include only personal information necessary to achieve the purpose of those decisions.

CONCLUSION:

1. The information at issue is "personal information" as defined by section 2(1) of the *Act*.
2. Section 37 applies to the record. The Tribunal's collection, use and disclosure of the personal information through publication of its decision is outside the scope of Part III of the *Act*.

Original Signed by: _____

Alanna Maloney
Investigator

August 2, 2018 _____