



NUMBER 8
REVISED SEPTEMBER 1998



PUTTING ONTARIO'S INFORMATION AND PRIVACY LEGISLATION TO WORK
INFORMATION AND PRIVACY COMMISSIONER/ONTARIO
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IPC Practices

Providing Notice of Collection

Under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act (the Acts), government organizations must provide notice to individuals when collecting personal information — whether collection is made directly or indirectly.

*Quite often complaints received by the Information and Privacy Commissioner (IPC) are the result of the lack of notice or incomplete notice. The IPC has found that while most institutions provide notice, some are not providing **adequate** notice.*

This issue of IPC Practices explains the notice requirements and suggests procedures for providing proper notice.

Section 39(2) of the provincial *Act* and section 29(2) of the municipal *Act* state that when collecting personal information, unless an exception applies, an institution **must** provide the individual to whom the personal information relates with notice which includes specific details on the following three requirements:

- the legal authority for the collection;
- the principle purpose(s) for which the personal information is intended to be used;
- the title, business address and telephone number of a person employed by the institution who can answer questions about the collection.

Manner of Providing Notice

Notice may be provided either orally — in person, over the telephone; or in writing — on an application form,

on a posted sign, in a newspaper ad; or in any other manner which informs the individual about the collection.

Exceptions to Providing Notice

- *provincial and municipal Acts*

Sections 39(2) and (3) of the provincial *Act* and section 29(3) of the municipal *Act* state that the notice requirement does not apply where:

- the Minister (who is the Chair, Management Board of Cabinet) waives notice; or
- the head cites a law enforcement exemption.

- *municipal Act only*

In addition, section 29(3)(c) of the municipal *Act* provides that the notice requirement does not apply if the *Act's* regulations provide that notice is not required.

Section 4 of Regulation 823 under the municipal *Act* states that where a head makes available to the public a statement describing the purpose(s) of the collection of personal information and the reason that notice has not been given, then the institution is not required to give notice of the collection to each individual. However, this only applies where:

- providing notice would frustrate the purpose of the collection;
- providing notice might result in an unjustifiable invasion of another individual's privacy; or
- the collection is for the purpose of determining suitability or eligibility for an award or honour.



Unsolicited Personal Information

Sometimes institutions receive personal information, such as résumés, which they did not request. If an institution does not retain unsolicited personal information, notice is not required. However, if an institution subsequently uses this personal information, for example, by placing unsolicited résumés in an inventory or by considering them at a later date, then the institution is obliged to notify the individual.

Recommended Procedures

The IPC encourages institutions to consider the following procedures for providing notice:

1. Advise all staff that under sections 38(2) of the provincial *Act* and 28(2) of the municipal *Act*, an institution must be certain that it has the authority to collect personal information, either directly or indirectly.
2. When notice is provided, ensure that the notice meets the three requirements listed in section 39(2) of the provincial *Act* and section 29(2) of the municipal *Act*:
 - *The legal authority for the collection:* Cite the proper legal authority that permits the collection by referring to the specific act and section which authorizes the collection. Where an act does not specifically refer to collection, provide the specific section of an act or by-law which authorizes the activity or program for which the information must be collected.

Note: It is insufficient to say, "This information is being collected in accordance with the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*."

• *The principal purpose(s) for which the personal information is intended to be used:* Be sure to fully inform the individual from whom the information is collected about how the information will be used.

Many complaints received by the IPC's Compliance department about collection, use and disclosure are the result of inadequate notice to the individual regarding the intended use of his or her personal information.

- *The title, business address and telephone number of a person employed by the institution who can answer any questions about the collection:* Ensure that the individual will have no difficulty in contacting someone who can provide answers to questions or additional information about the collection.
- 3. Include procedures in your operations/procedures manual for staff to follow when giving oral or written notice. This will ensure that all staff are aware of their responsibilities to provide notice and that the notice meets the *Acts*' three requirements.

Example of Written Notice

Here is an example of notice that may be used on a job application form:

Personal information on this form is collected under the authority of the *Municipal Act*, R.S.O. 1980, c.302 (as amended), and will be used to determine the qualifications for employment with the Town of Cityville. Questions about this collection should be directed to the Human Resources Co-ordinator, 110 Elm Street, Cityville, Ontario, L3P 2N1, (313) 234-5678.

IPC Practices

is published regularly by the **Office of the
Information and Privacy Commissioner**.

If you have any comments regarding this publication, wish to advise of a change of address or be added to the mailing list, contact:

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ISSN 1188-7206