

Ombudsman
Investigation Report and Recommendations
Executive Summary

In the matter of the complaint under the *Protection of Personal Information Act* by Shawn Graham and Edgar Vienneau against Hon. Paul Robichaud, Hon. Bernard Lord and Chisholm Pothier.

Standing and jurisdiction

In this matter, the first issue was to clearly address concerns of the standing of the complainants and of jurisdiction to investigate this complaint.

This report details my findings in that regard. While the Ombudsman must protect the compliance process under the *Protection of Personal Information Act* from any form of abuse, the complaints advanced can not be summarily dismissed as frivolous, vexatious or advanced purely for political gain. Any person with sufficient standing or interest may file a complaint under POPIA to my office and Mr. Graham and Mr. Vienneau both have standing to proceed in this matter.

Retention and Use of Information

Overall, I am satisfied that there were no significant or complex disputes as to the facts in this case. Minister Robichaud's office did retain the letter in question, for a political purpose, but the individual's identity and driver record was entirely immaterial to that purpose.

Premier Lord did allude to the letter during Question period in the Legislature, and offered to but did not table the letter. Mr. Pothier, on his own accord, copied and distributed the letter to the media without prior knowledge or approval of the Premier.

Findings

I find, in this case, the crux of the problem did not lie in the minister's purpose or the lack of consent of the letter. The chief problem was the lack of adequate safeguards in the Office of the Minister of Transportation. My investigation revealed that comparable safeguards were also lacking in the Office of the Premier.

In addition to the admitted violations of the safeguards principle under the Statutory Code of Practice of the *Protection of Personal Information Act* by Mr. Pothier, I have determined that the deputy heads in both departments failed to satisfy similar safeguard requirements, particularly with respect to ministerial correspondence, as required by the accountability principle. The defense of parliamentary privilege does apply to Premier Lord and Minister Robichaud in regards to alleged use of Mr. Vienneau's personal information in the Legislative Assembly and that is properly a matter for the Assembly itself to consider and is not within my jurisdiction.

Recommendations

It is my view that safeguards should be developed with respect to Ministerial correspondence in every case. I am recommending that a committee of deputy ministers be tasked with developing appropriate guidelines, retention schedules and practice directives with respect to the application of the *Protection of Personal Information Act* to Minister's offices and Ministerial correspondence.

I am also concerned that Mr. Pothier's resignation, and subsequent acceptance by the Premier might be viewed by the civil service as imposing a standard upon them that is reserved for Ministers. In my view Mr. Pothier's resignation was not necessary and should not have been accepted. Therefore, I am recommending that the committee of deputy ministers carefully study this circumstance, as it could create a chill within the civil service and this could be detrimental to the aims of open and transparent government.