

November 4, 2004

VIA COURIER

Mr. Mike Colle, M.P.P.  
Acting Chair  
Standing Committee on Justice Policy  
7 Queens Park Crescent, 7<sup>th</sup> Floor  
Frost Building South  
Toronto, Ontario  
M7A 1Y7

Dear Mr. Colle:

**RE: Bill 138 – *Emergency Management Statute Law Amendment Act, 2004***

The Office of the Information and Privacy Commissioner of Ontario (IPC) has a mandate under the *Freedom of Information and Protection of Privacy Act* to review and comment on the privacy implications of proposed legislative schemes. In my view, Bill 138, the *Emergency Management Statute Law Amendment Act, 2004* will have a significant impact on the privacy of every individual in the province of Ontario.

It is my understanding that the purpose of the legislation is to promote the public good through the protection of the health, safety and welfare of the people of Ontario by providing sufficient powers to deal with emergencies. I recognize that at a time of public crisis it is invaluable for the people of Ontario to feel secure and that the government may require strong powers to address emergency situations when they do occur. However, it is my view that this objective can be achieved without unduly compromising the individual's right to privacy. Accordingly, I recommend building a number of strong privacy safeguards into the legislation.

Pursuant to paragraph 7.0.2(4)11 of the proposed legislation, the Lieutenant Governor in Council may order a person to disclose information that may prevent, respond to or alleviate the effects of the emergency. Paragraph 7.0.2(9)1 states that such an order will prevail over any other Act or regulation. In addition, paragraph 3 of subsection 7.0.2(9) provides that the information subject to the order that is personal information shall be destroyed as soon as is practicable after the emergency is terminated.

Since an order may compel the disclosure of personal information, I have a number of concerns about this proposal. My primary concern is the lack of transparency and accountability in this process. While I recognize the need to deal with emergency situations in an unencumbered manner, there is also a need to ensure that the strong powers compelling the disclosure of personal information are exercised properly and only in the interests of the public.

.../2

First, to ensure openness and accountability to the public, I recommend that the legislation include a requirement to notify my office whenever an order compels the disclosure of personal information. Where it is warranted, such notices could be provided to my office in confidence.

At a minimum, this notice should describe:

- who is collecting the personal information and from whom;
- what personal information is being collected;
- the rationale for collecting the personal information;
- how long the personal information will be retained;
- the manner in which the personal information will be retained; and
- the manner in which the personal information will be disposed of when it is no longer required.

Second, I recommend that my office be given the responsibility of overseeing the destruction of any personal information when the emergency is terminated. My office would ensure that the information has been destroyed at the earliest time possible and in a manner that preserves privacy.

Subsection 7.0.2 (10) of the proposed legislation provides one exception to the general requirement to destroy personal information as soon as is practicable after the emergency is terminated. This exception involves personal information being disclosed for research purposes. While I understand the potential need for such an exception, I am concerned about the lack of safeguards incorporated into the legislation for the disclosure of information for research purposes. This is particularly important when you compare the provisions of the proposed legislation to those that are contained in existing legislation permitting the disclosure of personal information for research purposes, such as the *Personal Health Information Protection Act (PHIPA)*.

In my view, the conditions under which information may be disclosed for research purposes must be clearly specified in the legislation. Specifically, I recommend that the proposed legislation clarify:

- who decides what personal information is required, and what personal information may be disclosed for research purposes;
- under what conditions personal information may be disclosed for research purposes;
- who decides if the public interest in the research outweighs any potential threat to privacy and assesses the research from an ethical standpoint (normally a research ethics board would undertake such an analysis);
- who will ensure that any personal information that is disclosed for research purposes will be used only for that purpose;
- to whom personal information may be disclosed for research purposes (e.g., under *PHIPA*, a health data institute would conduct research using information custodians who are compelled to disclose to the government);

.../3

that if the research is going to be conducted without consent, personal information that can be used **either alone or in combination with other information** must be removed;

who will ensure that information that can be used alone or in combination with other information to identify an individual is removed before it is disclosed for research purposes;

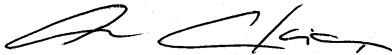
if research is going to be conducted with consent, who will be responsible for obtaining consent before the information is disclosed for research purposes;

what independent oversight body will ensure that the research requirements are fulfilled and receive complaints from members of the public about the research; and

that the researcher must enter into an agreement with the personal information custodian in which the researcher agrees to abide by the requirements of the legislation, any other conditions the custodian places on the researcher, and other generally accepted standards for researchers.

Thank you for considering my views on this matter. If you would like to discuss any of my comments or recommendations, please feel free to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ann Cavoukian". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Ann Cavoukian, Ph.D.  
Commissioner