



Information and Privacy
Commissioner of Ontario

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

VIA ELECTRONIC MAIL & ONLINE SUBMISSION

May 17, 2023

Goldie Ghamari
Chair of the Standing Committee on Justice Policy
Legislative Assembly of Ontario
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Dear Chair Ghamari:

**RE: Written Submission to the Standing Committee on Justice Policy for the
Legislative Assembly of Ontario: Schedule 1 of Bill 102, *Strengthening
Safety and Modernizing Justice Act, 2023***

I am writing with reference to Schedule 1 of Bill 102, *Strengthening Safety and Modernizing Justice Act, 2023*, recently introduced in the Ontario Legislature. The Office of the Information and Privacy Commissioner ("IPC") is an independent Officer of the Legislature with a mandate to protect the access and privacy rights of Ontarians. This mandate includes a prescribed oversight and review role under the existing provisions of the *Community Safety and Policing Act, 2019* ("CSPA"): a role that is proposed to be removed under these amendments, without a clearly articulated vision as to what alternative privacy protections will replace them.

IPC Comments and Recommendations

The IPC recognizes the Bill includes proposed legislative amendments that, if passed, would support bringing the *CSPA* into force. I understand that the *CSPA* contains many worthwhile and important reforms to modernize policing and enhance community safety in Ontario. However, these reforms need to be implemented in ways that protect the privacy rights of Ontarians, with effective safeguards and subject to independent oversight and review.

If Bill 102 is passed, the *CSPA* will repeal and replace the *Police Services Act*, the legislation currently governing the framework and standards of policing in Ontario. As proposed, Schedule 1 is ambiguous about applicable privacy safeguards, data integration requirements and alignment with other statutes. The proposed amendments of interest in Schedule 1 would, among other things:

- repeal subsections 5 (5) to (9), Personal Information;



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- repeal Section 6, Disclosure for Research Purpose; Section 7, Information and Privacy Commissioner's review of practices; and Section 8, Offence; and
- amend section 5 of the Act (personal information) to require the Minister to comply with any prescribed requirements regarding the de-identification and linking of personal information collected under subsection 4 (1) or (2) of the Act (information to Minister in accordance with regulations / information to Minister on request).

Specifically, the IPC's main concerns and recommendations with respect to Schedule 1 are set out below for your consideration.

1. The Ministry should use the existing authorities for data integration under Part III.1 of the Freedom of Information and Protection of Privacy Act (FIPPA)

Ontario's Data Integration Framework was created in the *Protecting What Matters Most Act* (Budget Measures) 2019. Related amendments were also made to *FIPPA* to include Part III.1, Data Integration, with the express purpose of establishing a robust, privacy-protective, government-wide approach to the practice of combining data from different sources into a single, unified regime. The framework outlined under Part III.1 of *FIPPA* enables prescribed data integration units to collect personal information for the purpose of linking and de-identification, so that the resulting datasets can be analyzed for the planning, delivery and evaluation of public programs and services. Critically, Part III.1 provides a consistent and privacy protective government-wide approach, including IPC review of data integration practices and procedures, to help ensure public trust and transparency related to the management of government data assets.

As the IPC has stated previously, purpose-built, standalone data integration programs, like the one being put forward in the *CSPA* should not exist separately from the suite of protections and controls provided for under Part III.1 of *FIPPA*.¹ Standalone approaches are problematic since they can undermine the foundational privacy rights of Ontarians that are enshrined in *FIPPA*, particularly when such requirements are to be set out in regulation, as opposed to in the statute itself. Leaving such important requirements to be specified in regulations is less transparent as regulations do not go through the scrutiny of the full legislative process, are more susceptible to change and are usually easier to amend.

Absent a clear and compelling case, data integration schemes existing before *FIPPA* Part III.1 should be either repealed, replaced, not proclaimed or abandoned to ensure a consistent government-wide approach to data integration. Likewise, any new data integration schemes should be brought under Part III.1. If Part III.1 is not meeting the data integration needs of Ontario ministries, then a review of Part III.1 should be undertaken, to determine whether amendments are necessary to make it fit for these purposes.

¹ See [Letter to the Ministry of the Solicitor General regarding the regulatory proposals under the Community Safety and Policing Act, 2019](#) and the [IPC's 2018 Annual report](#) (pg. 2)

2. Alternatively, if Part III.1 cannot feasibly accommodate the needs of the Ministry and a separate regime is justified, it should remain subject to effective safeguards and independent review and oversight

If any of the data integration and linking of personal information purposes of the *CSPA* go beyond the intended scope of the Part III.1 data integration scheme, and cannot feasibly be made to fit, then a separate data integration regime may be justified, so long as it remains subject to effective privacy safeguards and independent review and oversight.

Once brought into force, sections 3 to 5 of the *CSPA* would establish a number of new duties for the Minister to perform under the *Act*. These provisions would also give the Minister power to compel police services boards, chiefs of police, special constable employers, prescribed policing providers, the Complaints Director and administrators to provide prescribed information, including personal information in relation to these duties.

Our concern is that the proposed Schedule 1 amendments to repeal sections 5 (5) to (9), and sections 6, 7 and 8 of the *CSPA* would gut the privacy protections in place in respect of the de-identification and data linking (or data integration) of sensitive policing information under the *Act*. We are particularly concerned that repealing subsections 5 (5) and (6) and section 7 of the *CSPA* would strip the IPC of its oversight powers enshrined under the current provisions of the *CPSA* to review, approve and make orders with respect to the practices and procedures of the Minister to determine if the prescribed requirements have been met. While we appreciate that the Ministry has indicated that the government's intention is to have some of the section 3 based data integration activities be performed under Part III.1 of *FIPPA*, they have also indicated the intent to conduct a number of these activities entirely under future regulations of the *CSPA*. Referring data integration requirements to regulations diminishes the clarity, transparency and accountability of the proposed data integration scheme.

In this context, no rationale has been provided as to why government is removing the oversight functions of our office from the *CSPA*. Given the amendments would give the Minister extensive powers to directly and indirectly collect personal information from the policing institutions outlined above, I recommend that subsections 5 (5) to (9) and section 7 be retained so that robust measures are in place to adequately protect personal information collected and integrated under the *CSPA*. This would also provide some assurance to the public about the privacy risk mitigation measures in place related to the data integration scheme. To help ensure that, to the extent possible, the Minister's data integration activities would be subject to a coherent set of government-wide data integration related rules, Schedule 1 could be amended to provide that if personal information collected under the *CSPA* is subject to Part III.1 of *FIPPA*, then sections 5 (5) to (9) and 7 of the *CSPA* do not apply to that information.

Thank you for receiving my recommendations on Schedule 1. I would be pleased to answer any questions Committee members may have. In addition, I encourage the Ministry to consult with my office on these matters.

In the spirit of openness and transparency, I am providing a copy of this letter to the Minister, as well as the Deputy Minister, and will be posting this letter on my office's website.

Sincerely,

A handwritten signature in black ink, appearing to read "Kosseim", with a stylized flourish underneath.

Patricia Kosseim
Commissioner

Cc: Hon. Michael Kerzner, Solicitor General
Mario Di Tommasso, Deputy Solicitor General, Community Safety
Karen Ellis, Deputy Solicitor General, Correctional Services
Thushitha Kobikrishna, Committee Clerk, Standing Committee on Justice Policy