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How to balance the public's right to know with the individual's right to privacy

To be discussed:

- The issues that have come up at the federal level and the response from the Privacy Commissioner's office.

An overview of the privacy issues at the federal level.

- Canadians turn to the tribunals Parliament created to adjudicate disputes.
- Important privacy issues come out from the tribunals' practices of posting its decisions on the Internet...
- Because the decisions often contain lots of personal information.

The Gordon Decision

- The Federal Court of Canada upheld a decision (by the Minister of Health Canada) not to release the “province” field in information from a data base requested by a reporter...
- Because of a risk that it could reveal personal information about certain individuals.

The Gordon Decision

- The only authority for disclosure under section 8 of the *Privacy Act* on which it was urged the [government institution] should rely [was] “...for [the] purpose where, in the opinion of the head of the institution, **the public interest in disclosure clearly outweighs any invasion of privacy** that could result from the disclosure...”.



Pretexting

- Pretexting happens when an individual that has some information about a person is able, through **trickery**, to convince organizations and government institutions to provide more.

Data-matching and Data-mining

- **Data-matching** involves bringing together information from different sources.
- While **data-mining** is the process of extracting information from big data bases to look for patterns.



22 Complaints received

- The Office of the Privacy Commissioner received 22 complaints from individuals who have been personally affected by tribunals' practices of posting reasons for decision that are replete with sensitive personal information on the Internet.



One Complainant said:

- “[b]y posting my name, I feel violated in my privacy and this could adversely affect my prospects for jobs, business and my image in the community. I have never given consent...”

Another complainant said:

- “I’m at a loss to understand why this would have been done, except to think that this is further punitive measures taken against me”.

Another complainant said:

- “I quite appreciate the need for openness and transparency in making decisions of courts and quasi-judicial bodies available to the public. I also quite appreciate the need for protection of individuals’ privacy...[t]he use of initials to protect the privacy of persons is not a novel and untried concept – it is standard practice in Canadian courts of competent jurisdiction in both civil and criminal procedures, and it has not impaired the public availability and use of the content of court decisions”.

Finding of the Privacy Commissioner

- The open court principle can co-exist effectively with tribunals' statutory obligations under the Privacy Act through reasonable efforts to depersonalize any decisions posted online by replacing names with random initials.



The Public Interest in Disclosure

- Subparagraph 8(2)(m)(i) of the Privacy Act authorizes the disclosure of personal information in tribunals' decisions only in circumstances where the public interest in the contemplated disclosure clearly outweighs an individual's privacy interests.



Questions ? / Discussion



See OPC website for more info:
www.privcom.gc.ca