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# AUTHORIZATION FOR INDIRECT COLLECTION OF PERSONAL INFORMATION

## MINISTRY OF FINANCE

Drew McArthur, A/Information and Privacy Commissioner

June 16, 2017

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### **SUMMARY**

#### **Indirect collection to contact parties in relation to the 2012 Ministry of Health Employment Terminations**

Under s. 42(1)(i) of the *Freedom of Information and Protection of Privacy Act* (FIPPA), the Commissioner authorizes the Ministry of Finance (Ministry) to indirectly collect the email and/or mailing addresses of approximately 74 individuals for the purpose of contacting those individuals as recommended in the Ombudsperson's April 6, 2017 report: *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters* (Misfire Report).

### **BACKGROUND**

The Misfire Report, undertaken by the Office of the Ombudsperson, investigated the circumstances surrounding the termination of employment and data-access contracts by the Ministry of Health. The Report sets out, among other things, the harm caused by the government's flawed investigations and rushed decision-making related to those

terminations and the resulting harmful consequences.<sup>1</sup> The Report made 41 recommendations to address the harm done to individuals.

On June 14, 2017 the Office of the Information and Privacy Commissioner received a request from the Ministry of Finance for authorization to indirectly collect the personal information of individuals in order to enable government to satisfy recommendations 12 and 13 of the Misfire Report:

**Recommendation 12** – By June 30, 2017, government issue a public statement confirming that the ministry has withdrawn the final report of the Investigation and Forensic Unit of the Office of the Comptroller General (OCG Report), and acknowledge that the report contains inaccuracies and will not be relied on;<sup>2</sup> and

**Recommendation 13** – By June 30, 2017, the Ministry of Finance send a letter of apology to each of the individuals named in the OCG Report, who it notified following the unauthorized disclosure of the report, confirming that the ministry has withdrawn the report and that the report will not affect the ability of those individuals to work for or with government in the future should they wish to do so.<sup>3</sup>

To satisfy these recommendations the Ministry requires the contact information for two groups of people:

- 17 government employees who received or had access to the OCG Report, to advise them that the report has been withdrawn, contains inaccuracies and will not be relied on; and
- 57 individuals who were named in the OCG Report, to confirm to them that the report has been withdrawn and will not affect the ability of those individuals to work for or with government in the future should they wish to do so.

The Ministry proposes to collect the email and/or mailing addresses of these 74 individuals by requesting the information from the following sources, in the order listed:

1. publically available address registries such as the Yellow Pages or Canada411;
2. the current employer of the individual (where known);
3. BC Pension Corporation; and then
4. the Insurance Corporation of British Columbia.

Where it is necessary to provide information to one of these sources, only the minimum amount of information necessary will be provided.

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<sup>1</sup> Office of the Ombudsperson, *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters* (hereinafter: “Misfire Report”), available at <https://www.bcombudsperson.ca/sites/default/files/Referral%20Report%20-%20Misfire.pdf>, at page 32

<sup>2</sup> Recommendation 12, Misfire Report, at page 370.

<sup>3</sup> Recommendation 13, Misfire Report, at page 370.

## **DISCUSSION**

Section 27 of FIPPA requires that a public body collect personal information directly from the individual the information is about, with specific exceptions. This requirement is based on the fundamental privacy principle that individuals should have control over their personal information and that, in order to exercise that control, the collection of their personal information should be transparent.

One of the exceptions to this general requirement of direct collection is authorization by the Commissioner for the public body to collect personal information from sources other than the individual the information is about under s. 42(1)(i) of FIPPA.

In previous decisions where my Office has authorized indirect collection under s. 42(1)(i), I considered the following factors:

1. Has a clear and sufficiently compelling public interest or objective been identified that cannot reasonably be accomplished through direct collection of personal information?
2. Is the requested departure from FIPPA's rule of direct collection clearly justified when judged against the nature of the personal information to be collected and the purpose for which (and to whom) it is to be disclosed or used?

I will consider these same questions in relation to this request.

### **1. Has a clear and sufficiently compelling public interest or objective been identified that cannot reasonably be accomplished through direct collection of personal information?**

The matters addressed by the Ombudsperson in the Misfire Report have been the subject of significant public interest since 2012. This is evidenced by considerable discussion in the Legislature, the media, and by the individuals who were affected. In addition, these matters have been subject to at least three reports: the OCG Report, a government commissioned review by labour relations lawyer Marcia McNeil, and finally the Misfire Report.

The Ombudsperson was tasked with investigating the 2012 Ministry of Health terminations on July 29, 2015 by the Select Standing Committee on Finance and Government Services (Committee), a committee of the Legislative Assembly consisting of members from both elected parties. The Committee adopted a motion under s. 10(3) of the *Ombudsperson Act* to:

... refer the Ministry of Health terminations file to the Ombudsperson for investigation and report as the Ombudsperson may see fit; including events leading up to the decision to terminate the employees; the

decision to terminate itself; the actions taken by government following the terminations and any other matters the Ombudsperson may deem worthy of investigation ...

On September 9, 2015, the Committee unanimously issued further directions to the Ombudsperson on the conduct of the investigation.

Based on the above, I am satisfied that the investigation and resolution of the 2012 Ministry of Health terminations is an objective of compelling public interest.

The Ministry states that government cannot meet recommendations 12 and 13 without the contact information for the individuals described in the recommendations. As the Ministry has no means to contact the individuals, it is clear that the objective of meeting these recommendations cannot reasonably be accomplished through direct collection of personal information.

Therefore, I also find that satisfying recommendations 12 and 13 from the Misfire Report constitutes a sufficiently compelling public interest and objective that cannot reasonably be accomplished through direct collection of personal information.

**2. Is the requested departure from FIPPA's rule of direct collection clearly justified when judged against the nature of the personal information to be collected and the purpose for which (and to whom) it is to be disclosed or used?**

The threshold to justify a departure from the general rule of direct collection will be lower or higher based on the sensitivity of the personal information being collected. The personal information to be collected in this instance is contact information: email and/or mailing addresses. While contact information in some contexts may be very sensitive, such as contact information for an individual who is fleeing domestic violence, in other contexts it may be of such low sensitivity that it does not even fall within the definition of personal information, such as business contact information.

The Ministry states in this instance the indirect collection of personal information is in the interests of the people the information is about. It is necessary to redress the impact that the health terminations have had on a number of third parties.

I agree that the purpose for which the personal information is to be collected is in the interest of the individuals the information is about, and I find that the personal information being collected is, in this context, of low sensitivity.

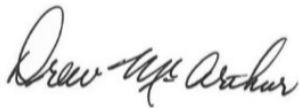
I find that Ministry's requested departure from FIPPA's general rule of direct collection is clearly justified when judged against the low sensitivity of the personal information to be collected, and the beneficial purpose for its collection to contact individuals affected by the Ministry of Health terminations.

## **AUTHORIZATION**

For the reasons noted above, under s. 42(1)(i) of FIPPA, I authorize the Ministry of Finance to indirectly collect the following personal information about approximately 74 individuals, as necessary to satisfy recommendations 12 and 13 of the Misfire Report:

- Email address; and/or
- mailing address,

June 16, 2017



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Drew McArthur

A/Information and Privacy Commissioner  
for British Columbia