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File: 6100-01786
6100-01787

AUG 15 2008
ACUT

Ms. Philippa Lawson
Ms. Dixie Ho
University of Ottawa
Faculty of Law
57 Louis-Pasteur
Ottawa ON K1N 6N5

Dear Ms. Lawson and Ms. Ho:

Please find attached our preliminary report with regard to the complaints you filed against infoCANADA under the *Personal Information Protection and Electronic Documents Act*, and received in our Office on July 20, 2005.

Please note that, in my preliminary report, I have made recommendations to infoCANADA and have asked that I receive a response within 30 days of the date of this letter. Once I have received this response, I will be writing to you again with my final report on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Denham".

Elizabeth Denham
Assistant Privacy Commissioner

Attachment



Preliminary Report of Findings

Files` 6100-01786, 6100-01787

Complaint under the *Personal Information Protection and Electronic Documents Act (the Act)*

1. The complainants, Ms. Philippa Lawson and Ms. Dixie Ho, allege that infoCANADA fails to obtain consent for the collection, use and disclosure of personal information it gains through data matching. Specifically, they are concerned about the company's matching of publicly available personal information with Statistics Canada (SC) geographically specific demographic statistics. The complainants contend that this process personalizes the previously non-personal demographic information, and by so doing, creates personal information (information about identified individuals), inaccurate as that personal information may be. As a result, they believe that this act of creating personalized demographic information through data matching requires consent under the *Act* for its use and disclosure. Ms. Lawson and Ms. Ho also believe that infoCANADA's purpose for creating and selling such information is inappropriate.
2. In addition, the complainants allege that infoCANADA fails to meet the criteria of "openness" under the *Act*. Specifically, they are concerned that infoCANADA does not provide details as to how it collects, uses and discloses the personal information that it compiles into consumer lists; that infoCANADA offers little detail about its information practices and policies; and that infoCANADA is resistant to answering inquiries about its practices.

Summary of Investigation

3. InfoCANADA's parent company, infoUSA, has been in operation since 1972. In the late 1980s, infoCANADA became a division of infoUSA. InfoCANADA has offices across Canada and advertises itself as Canada's largest repository of public-domain data for direct-marketing purposes.

Consent

4. In general, the complainants allege that infoCANADA's business involves the creation of personalized demographic information through data matching, and that "the use and disclosure of this newly created 'personal information' requires consent." Furthermore, they state that "because infoCANADA uses and



discloses detailed and extensive demographic information...a reasonable person would expect consent to be obtained before such information about them is compiled and sold in the marketplace.”

5. According to infoCanada, it provides lists to customers based on the customers' selection criteria. The company uses aggregated data sources that it overlays onto its consumer database. InfoCANADA claims that, essentially, it sells lists of names, addresses and telephone numbers of people listed in telephone directory White Pages, based on the characteristics of the neighbourhood in which the people live. InfoCANADA begins its process with the White Pages information, and then sorts it using demographic information obtained from SC census data. Although infoCANADA no longer uses SC's services, it obtains SC's data through other vendors, such as Environics Analytics Inc. In discussions with this Office, infoCANADA stressed the limitations of its consumer lists.
6. The company has two main databases—one for business information and one for consumer information. Ms. Lawson's and Ms. Ho's complaints relate to the latter database of 12 million Canadians. InfoCANADA claims that this database consists of listings of name, address and telephone information as it appears in telephone directories. Customers include small businesses, multinational companies and government agencies, which are offered various lists for direct marketing purposes.
7. As explained to this Office, infoCANADA offers its clients basic “selects.” In other words, a client can select the criteria on which it wants a consumer list to be based, such as age, income, home ownership, estimated home value, mailing address, telephone number and number of contacts per residence. The geography selections include postal code, city, province, metro areas, telephone area code, carrier routes, and radius around a residence. Other popular “selects” include estimated income, adult gender and ethnicity.
8. InfoCANADA describes its business processes as analogous to walking through a specific neighbourhood where certain general characteristics of the community would be apparent to the observer. The company views its service in terms of offering the electronic mechanisms to do what individuals could do manually if time permitted.
9. In order to clarify the selection process, infoCANADA used the example of a customer order for a list of names, addresses and telephone numbers of people who live in Ottawa neighbourhoods in which the median household income exceeds \$75,000.



10. According to infoCANADA, it is not a list broker, and it does not maintain files on individuals, only on its own corporate clients. In other words, it does not maintain lists of consumers with certain characteristics, such as those who own yachts, vacation properties, etc.
11. The company states that it provides customers with lists of names, addresses and telephone numbers of consumers, in a mailable format. In some cases, gender is provided. Also, in some instances, ethnicity is imputed, using name-table models—a process based on genealogical regression analysis in which certain surnames are frequently associated within commonly identifiable ethnic origins.
12. In order to clarify the request process, infoCANADA gave this Office a sample of an order for 50 Canadian households. The selection criteria included the following:
 - Address type: single family dwelling unit, one record per address
 - Geography options: postal, first three digits of postal code
 - Census selection options:
 - Average age, male and female population
 - 30-44
 - 35-49
 - 40-54
 - 45-59
 - Average household income: \$80,000 and over.
12. The resulting consumer list contains a column of infoCANADA identification numbers with corresponding columns of individuals' first names or initials, surnames, street addresses, cities, provinces, postal codes, country, telephone area codes and telephone numbers. Telephone numbers are verified at least once annually, according to the company, and it guarantees a 99% accuracy rate.

How infoCANADA develops lists

13. InfoCANADA summarized its data compilation process as follows:
 - Names, addresses, telephone numbers and, by implication, the cities/towns and provinces of Canadian consumers are compiled from Canadian White Pages telephone directory listings.



- InfoCANADA pointed out that it does not have access to unlisted telephone numbers or to the names of people not listed in a directory (for example, spouses).
- Names are captured as they appear in the directory. The company states that it does not attempt to determine, for instance, whether D. Anderson refers to David Anderson or Denise Anderson.
- Using proprietary models, the company attributes gender and ethnic or religious origin (based on first and/or last name). Names are categorized as female, male or androgynous. InfoCANADA states that it cannot assign gender to the majority of listings because they are published with a first initial only.
- The directories are scanned into a machine-readable format, and every record is manually keyed to maintain quality of 99 per cent compared to the source.
- Postal codes are assigned using Canada Post certified information.
- InfoCANADA claims that it enhances the information collected from the directories only by adding postal codes and by imputing gender and ethnicity. It does not add any identifiable information such as transaction data or magazine lists, nor does it add any privately sourced information to its database.
- Other infoCANADA proprietary models identify the likelihood of single or multiple family-dwelling units.
- The consumer database is updated on a monthly basis.
- Before any information is made available to a customer, the database is audited, and data is purged against Canadian Marketing Association and internal Do Not Mail/Call files. Files can also be processed through the National Change of Address Service, licensed through Canada Post.
- In response to requests from customers, infoCANADA sorts or filters this information based on data from SC's Census Database. SC collects information at the household level; however, the information is released or published only as aggregated data based on census dissemination areas¹.
- InfoCANADA also makes use of SC's Postal Code Conversion File. It correlates and represents postal codes within dissemination-area boundaries, which enables geographic list selections to be made.

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¹ A dissemination area is a small, relatively stable geographic unit composed of one or more blocks. It is the smallest standard geographic area (400 to 700 persons) for which all census data are disseminated. Dissemination areas cover all of Canada's territory.



14. InfoCANADA indicated that its procedure for developing its lists involves overlaying two aggregated data sources onto its consumer database. The first data source is SC's Census Database, which it obtains from Environics for a fee. This database provides a number of consumer demographics based on dissemination areas. Some of the data elements provided by SC include median age, median household income, propensity of households with children, propensity of home ownership, median home value and dominant period of construction at the dissemination-area level. The aggregated census information, such as average age or median home value, is used to determine factors such as the probability of children, and marital status.
15. The second data source is SC's Postal Code Conversion File. The file correlates and represents postal codes within dissemination-area boundaries, which make it possible for geographic list selections. InfoCANADA states that it maps census boundaries within the postal code areas and overlays this information onto the dissemination areas.
16. Another database, namely, the Generation 5 Mosaic Neighbourhood Cluster System, is licensed by infoCANADA from a Toronto-based company. Using aggregated information from various sources, including SC, Generation 5 licenses its demographic-segmentation system for neighbourhood-level target-marketing applications. This database provides generally aggregated, descriptive, life-stage/lifestyle categories in geographic clusters across Canada and in four specific market-focused categories. Similar to the overlay methodology used with SC data, infoCANADA provides lifestyle-cluster selection criteria to its customers within postal-code-driven geographic areas.
17. In addition, infoCANADA states that it provides list-enhancement services to businesses. This service involves comparing customer data to its own data to ensure the information is current and accurate. For example, infoCANADA may add telephone numbers to the lists of subscribers provided by a customer who is a magazine publisher. The company claims that, in such a case, it would not retain or use the names of the customer's subscribers in order to enhance its own lists. For instance, it would not determine that D. Anderson at 123 Main Street is David Anderson, nor would it retain any information about an individual's subscription choices or purchases. InfoCANADA is of the view that doing so would contravene the *Act*.
18. The Office learned that the terms and conditions of infoCANADA's customer agreements specify that purchasers will "abide by the current business practices respecting the privacy of consumers and will not imply to an individual that any specific information is known about that individual." Customers must sign a



disclaimer or an on-line agreement whereby the customer agrees not to use the information for any illegal purpose. As well, the disclaimer stipulates that the information is not to be shared or sold.

19. InfoUSA handles infoCANADA's marketing. Prior to receiving Ms. Lawson's and Ms. Ho's complaints, infoCANADA used US-marketing publicity materials for its Canadian marketing program without explicitly differentiating between US and Canadian selection options. This caused confusion about the nature of the Canadian database, particularly as infoCANADA's on-line marketing material gave the impression that the company offered Canadian consumer-list selections such as yacht owners and aircraft owners. It appeared that the information applied to both the Canadian and US consumer lists. However, this is not the case—Canadian lists do not contain such information.
20. InfoCANADA advised the Office that the US database is "far richer" than the Canadian database. The US database contains more information, largely due to the United States having different privacy laws than Canada. This Office confirmed that American customers purchasing Canadian consumer lists from infoCANADA are provided with the same information as Canadian customers.
21. InfoCANADA's on-line advertising material now differentiates between the Canadian and US consumer lists. The demographic selections include average income, average age, likely marital status, and likely home ownership, all of which are inferred through the use of data provided by SC. The material also clearly specifies that no confidential information about individuals or households has been obtained from SC.
22. InfoCANADA's most recently published marketing brochure indicates that Canadian consumer selections include propensity of home ownership, average income, ethnicity, gender, average age, marital status, telephone number and more. The brochure explains its compilation process as follows:

The Database of 12 million Canadian Consumers has been specifically created to provide the full range of actionable information you need for a successful marketing project. Our files are derived from census-based overlays and phone directory information for the highest degree of accuracy and maximum coverage. In fact, our Canadian Database offers a number of demographic and psychographic selections not available together on any other consumer file.*

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The last sentence of the above explanation will not appear in future marketing materials. A footnote states that “No confidential information about an individual, family, household, organization or business has been obtained from Statistics Canada. Information is based on computer file(s) licensed from Statistics Canada.”

Statistics Canada Census Data

23. Statistics Canada’s commitment to maintain the confidentiality of information obtained from the Canadian public is an integral part of the *Statistics Act*. This legislation requires that all personal information be kept confidential and that no one outside SC be permitted access to any individual’s census information. According to SC, it releases only aggregate non-confidential information to the public and to commercial entities, and provides it in a form that protects the confidentiality of the individual. The data is screened, and multiple measures are taken to guard against disclosure of census information about individuals. Such measures are called data perturbation procedures.
24. SC explained that, if all members of an identifiable group share the same or very similar characteristics, inferences could be made about individuals within the group. This as a form of inferential or probability disclosure, and SC addresses it through the use of statistical techniques such as sampling, rounding, suppression, regrouping or a combination thereof.
25. In clarifying how it mitigates this type of disclosure, SC gave as an example a scenario in which SC deals with quantitative data, such as income. If sampling does not provide a sufficient degree of uncertainty as to whom the information applies, other measures are used to prevent the accurate prediction of values for individual members of a population. For instance, SC reports on median household income. If a dissemination area is homogenous in terms of household incomes (in other words, all or many of the households have an income very close to the median), SC will not report the household income for that dissemination area. In some situations, SC rounds particular data to the nearest five. For example, if a dissemination area has eight people reporting that they are of South Asian origin, SC will show this as ten, and if one person is of Japanese origin, SC will report this as zero.
26. SC provides a wide range of products and services, some at no cost and some for a fee. This includes pre-formulated tabulations, custom tabulations, analytical reports, public-use microdata files and analytical services. SC pointed out that all of its products and services include a notice stating that “No confidential personal



or business information has been released without consent.” Its marketing material informs the public and potential clients that individual respondents cannot be identified by its products.

27. In addition, SC stated that it licenses statistical information to secondary distributors, through its Value-Added Distribution Licence Agreement and its Third Party Value-Added Distribution Licence Agreement. As only non-confidential information can be released to the public, the agency includes in its licensing agreements the requirement that all secondary distributors must inform their data users that “no confidential personal or business information has been obtained from Statistics Canada.” The licensee also agrees not to merge or link the computer file(s) with any other databases, for commercial sales, in such a fashion that it gives the appearance of the licensee receiving, or having access to, information about any identifiable individual, family, household, organization or business held by SC.
28. Compliance with the conditions of the licensing agreements is monitored by SC. Under the agreements, the licensee cannot claim that any proprietary methodology it may have used was supported or endorsed by SC or that its data analysis was approved by SC. The agency noted that it strictly enforces its requirements, and failure to comply can result in legal sanctions.
29. A Value-Added Distributor, such as Environics, purchases SC products for use in developing new products for sale. Such development could involve combining SC data with data from other sources. The concept of “value-added” means the development and delivery of value-added products. For example, a company that increases the level of functionality associated with any original SC file embeds the SC data in the value-added product, and uses that data each time the product is delivered to the ultimate client, and/or transfers or communicates not more than 50% of the original SC data set in a non-modified form. Value-Added Distribution Licence Agreements authorize the design and distribution of new and derived products to users.
30. Environics also qualifies as a data reseller in that, in some cases, it does not make any significant changes to the underlying content of the SC data or affect the use of the data/materials in the hands of the user. Some utility formatting or industry standardized processes are deemed to be simple conveniences and do not involve a significant intellectual cost or high effort. These minor transformations are not regarded by SC as adding value. In addition, infoCANADA is an authorized reseller of selected Environics data files.



31. Clause 11.1 of the Value-Added Distribution Agreement states, in part, that:

The Licensee agrees, as a condition of being granted this Licence, to disclose in writing to Statistics Canada, prior to execution of this agreement, a statement of facts regarding the ownership of the firm, the nature of its business and the intended use of the Computer file(s) listed in Schedule "A".

The Third Party and Value-Added Distribution Agreement contains a similar clause.

The Canadian Marketing Association (CMA)

32. The CMA states that its mission is to create an environment that fosters the responsible growth of information-based marketing in Canada. Its goals are to establish and promote standards of practice for marketing and to promote codes of business conduct, and it takes an active role in ensuring compliance with such standards.
33. InfoCANADA, as a member of the CMA, ascribes to the standards of business conduct fostered by the Association. It also must abide by the seven principles of personal privacy adopted by the CMA, which are laid out in the Association's Code of Ethics and Standards of Practice.
34. The CMA stressed that infoCANADA does not merge information from two sources of publicly available information, but rather uses the geo-demographic information from SC as a filter applied against public lists of names, telephone numbers and addresses from telephone directories of different geographic areas. It is CMA's position that the result is an *average* for a given region for variables such as income, age and ethnicity, and that this average increases the probability that contact will be limited to those consumers who will likely have an interest in the product or service being offered.
35. In reference to personal information that either is exempt from the consent requirement or that is provided with consent, the CMA notes that the filtering of such information through non-personal data sources is a standard, widespread practice in the marketing industry. It claims that this is an efficient and effective way of limiting the information being sent to consumers.



36. The CMA supports infoCANADA's business process and notes that:

The process is used to sort publicly available contact information according to general demographic characteristics which may apply to those people who live in those areas. The information is not person-specific, and it is not necessarily accurate at the individual level. In effect, where high-level demographic indicators are used to sort and assemble consent-based lists, there is no person-specific information added to personal files.

Openness

37. Ms. Lawson and Ms. Ho claim that infoCANADA provides very little information on its web site or in other publications about its policies and practices regarding the management of personal information. Other than a company privacy policy regarding the collection and use of customer and web site visitor information, they believe that infoCANADA does not specify how it collects, uses and discloses the personal information that it compiles into consumer lists. Furthermore, the complainants assert that infoCANADA is obligated to explain what it does internally with consumer data.
38. Upon request, infoCANADA provided the complainants with a one-page document, which is not available on its web site, entitled "Canadian Privacy Legislation." The document notes that the *Act* exempts from its consent provisions, people's names, addresses and telephone numbers that are published in a telephone directory. The document also provides contact information for the company's Privacy Officer. When the complainants contacted the company, it provided additional information about its collection, use and sale of consumer information.
39. This Office reviewed infoCANADA's privacy policy on its web site. It describes how the company protects user information, including sensitive information such as a credit card numbers that are collected through its web site. The company allows web site visitors to opt out of further promotional contacts and to update or correct personal information previously submitted. The web site also provides users with an e-mail address through which they can obtain more information about infoCANADA's privacy policy.

Application

36. In analyzing the facts, we applied subsections 2(1) and 5(3), paragraph 7(1)(d), sub-paragraphs 7(2)(c.1) and 7(3)(h.1), and Principles 4.3 and 4.8.



37. Subsection 2(1) defines personal information as information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization. Subsection 5(3) states that an organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.
38. Paragraph 7(1)(d) indicates that, for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may collect personal information without the knowledge or consent of the individual only if the information is publicly available and is specified by the Regulations. Sub-paragraph 7(2)(c.2) notes that for the purpose of clause 4.3 of Schedule 1 and despite the note that accompanies that clause, an organization may, without the knowledge or consent of the individual, use personal information only if it is publicly available and is specified by the Regulations. Sub-paragraph 7(3)(h.1) adds that for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is of information that is publicly available and is specified by the Regulations.
39. The Regulations Specifying Publicly Available Information under the *Act* set out distinct classes of such information, including, under regulation 1(a), personal information consisting of the name, address and telephone number of a subscriber that appears in a telephone directory that is available to the public, where the subscriber can refuse to have the personal information appear in the directory.
40. Principle 4.3 stipulates that the knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.
41. Principle 4.8 requires an organization to make readily available to individuals specific information about its policies and practices relating to the management of personal information.

Analysis

42. This complaint essentially revolves around the question of whether adding aggregated geo-demographic information to publicly available names, addresses and telephone numbers—information that does not require consent for use or disclosure—results in personal information that does require consent. In other words, does the White Pages information lose its consent-free status as a result of the attribution and sorting that infoCANADA performs? And, does the fact that



a person lives in a neighbourhood with certain characteristics constitute personal information about the individual? The information at issue is the consumer lists that are produced by infoCANADA's filtering process, using customer-requested criteria.

43. The complainants believe that, by "matching" publicly available personal information with geographically specific demographic statistics, infoCANADA is able to produce information that can be linked to identifiable individuals. Nonetheless, they concede that this process may result in inaccurate personal information.
44. White Pages information is publicly available personal information. No consent is necessary to collect, use or disclose it in the scenarios contemplated under paragraph 7(1)(d), and sub-paragraphs 7(2)(c.1) and 7(3)(h.1). InfoCANADA does not enhance the White Pages data with any individual-specific information, for instance, from magazine subscription lists or public registries. The company takes aggregate information licensed from SC, which is not personal information under the *Act*, to sort this publicly available personal information.
45. Our investigation established that infoCANADA uses a filtering or sorting process to compile consumer information. Although infoCANADA no longer acquires census data directly from SC, it obtains the same data from other vendors.
46. The concept of attribute disclosure is useful in considering the privacy ramifications of infoCANADA's processes. This disclosure occurs when something new is discovered about an individual.
47. Our understanding of the process is that the census data is combined with other data sets and proprietary models to create a database about Canadians. A key component of the database is the White Pages, which provides the names, addresses and telephone numbers of individuals in the mailing lists that are sold.
48. The database has two types of information: (a) information about the individuals, which is associated with records from the White Pages, and (b) information about dissemination areas or postal codes, which is obtained from the census and other data sets. When an infoCANADA client chooses a set of selects on (b), a subset of the dissemination areas is returned based on the criteria of the selects, and, out of the individuals who live in those areas (as determined by their addresses in the White Pages), a subset is returned based on the criteria of the selects on (a). For example, if a client selects "income in the range of \$50,000 to \$70,000 for males," then the income condition is applied to the dissemination areas and returns those areas with average incomes within that range. Then the



gender condition is applied to the individuals in the selected postal codes.

49. To determine whether it is easy to get information about individuals from their names and addresses, this Office performed Internet searches as well as searches on public registries. To find out whether the information in the selects correctly characterized the individuals in the mailing lists, we performed a series of simulations to understand the accuracy of the selects under worst-case scenarios.
50. Our results suggest that, with minimal Internet-search skill, it is quite easy to gather some basic information about individuals if their names and addresses are known. For example, it is easy to access gender and religious origin by using name-gender databases and by looking up names in religion-specific name web sites. However, there are limitations to what can be ascertained.
51. Only about 25 per cent of White Pages names have a first name that may allow for gender identification, and InfoCANADA maintains that it does not use other sources of information to match names to first initials. For those listings with first names, not all are gender-specific—for instance, Leslie, Kris, Pat.
52. With respect to religion, the level of accuracy may vary widely. Sheamus O'Leary is highly likely to be a Catholic. However, some married women take their husband's surname, which can further confuse the issue of religious origin. The Catholic-sounding Patricia O'Toole may actually have a maiden name of Wong. Although many individuals with Arabic names are Muslim, some are not. They could also be Lebanese Christian or Egyptian Copts or Syrian Alawis, for instance.
53. The variables that are not readily available publicly are income, marital status and whether the individual has children. We focused on income as it is the most sensitive variable of these three. The simulation results suggest that under worst-case assumptions, the accuracy of the income attribute provided by infoCANADA can be quite high. Two important factors come into play: the variation in the distribution of the data in the geographic area (e.g., if everyone earns an income within a \$10,000 range, then the average income will be a good characterization of everyone's income), and whether the selects cover the centre of the distribution. I should note that our analysis was limited because we did not have access to the raw census data and therefore relied on other public information and simulations. However, the simulated scenarios seemed to be plausible for our purposes.



54. Because it is relatively easy to gather basic information—gender, ethnicity, religious origin, dwelling type—about individuals who are listed in the White Pages, it is difficult to make the case for attribute disclosure. Some of the aggregate information can also be easily obtained from other public sources, albeit for a fee. The key pieces of information that are not easy to obtain through public sources are income, marital status and whether the individual has children.
55. Under the worst-case scenario, the accuracy of the selects can be quite high, despite the perturbations performed by SC. Accuracy is not static: it is largely a function of the amount of variation and of the selects. If the variation is narrow, then aggregate data will more accurately characterize the population. If the selects are centred around the mean of the original population distribution, accuracy will also be increased. However, the more numerous the variables included in the selects, the lower the accuracy will be.
56. In the context of infoCANADA's data sorting, It is not possible to determine how prevalent the worst-case scenario is, nor how often such a scenario would occur. However, it would be reasonable to conclude that the probability of occurrence is greater than zero.
57. Nevertheless, the information assembled by infoCANADA and sold to the company's customers in the form of consumer lists is unlikely to be highly accurate with respect to each individual on the list. However, it may be generally accurate at the group level, which is sufficient for marketing purposes. Following are some of the factors that limit the accuracy of the lists:
- Names and addresses in telephone directories are not 100% accurate for many reasons. Some people move to new addresses with different telephone numbers after the directory has been published, and some people die. Also, not all adults living in a particular household are listed in the directory.
 - SC data represents a snapshot in time, that is, census day once every five years. Data tends to become less accurate the further removed it becomes from census day.
 - Of all census respondents, 80% of households receive the short questionnaire that contains seven questions on basic topics such as the respondent's relationship to others in the household, age, sex, marital status and mother tongue. Only 20% receive the long questionnaire that contains the same seven basic questions plus 52 additional questions on topics such as education, ethnicity, mobility, income and employment.



- There is a wide disparity between the data of the White Pages and that of SC. SC collects data from every household and, in theory, from every individual in a dissemination area or neighbourhood. An infoCANADA list of people in the same dissemination area or neighbourhood would be much smaller as it would exclude people with unlisted telephone numbers, as well as those whose names are not listed in the White Pages, namely, some spouses, children or elderly parents living with their adult children. Conversely, an infoCANADA list would contain the names of people with listed telephone numbers who had moved into a different dissemination area or neighbourhood since the last census. The two sets of data can, therefore, be very dissimilar.
- With respect to income, a DA with an average income of \$60,000 could be the result of a large number of residents with incomes around \$60,000. On the other hand, it could be the result of residents having a wide range of incomes from \$10,000 to \$250,000 that average out to \$60,000. There is nothing in the SC data to indicate which scenario is more likely. Moreover, it is important to keep in mind that infoCANADA has no way of knowing if the attribute is accurate for any given individual in the neighbourhood.

58. In practice, infoCANADA offers a lot of publicly available information in bulk form. At its simplest, however, infoCANADA sells the names, addresses and telephone numbers of people who live in neighbourhoods with certain characteristics. Any individual person in that area may or may not have some or all of these characteristics. For example, a consumer list may consist of names, addresses and telephone numbers of people who live in Ottawa neighbourhoods where more than 75% of households own their own homes and the *average* value of the homes is in excess of \$400,000. Some people on the list might be home owners living in a house worth over \$400,000. Others might be renters occupying a basement apartment, or children with their own telephone numbers, or people renting houses worth less than \$400,000. Others should not even be on the list.

59. Nothing changes the fact that the information included in the consumer list is publicly available; it merely has been sorted according to geo-demographic data. I do not consider the fact that a person lives in a neighbourhood with certain characteristics to be personal information about the individual, as specified in subsection 2(1). From my perspective, it is information about the neighbourhood, not about the individual.



60. Therefore, in compiling its consumer lists, it does not appear that infoCANADA changes the status of the White Pages information from publicly available personal information to personal information subject to consent requirements. Consequently, in my view, this publicly available personal information that is exempt from consent when collected remains exempt from such consent when sold by infoCANADA as part of its consumer lists. Thus, infoCANADA is not in breach of Principle 4.3.
61. The complainants contend that a reasonable person would consider infoCANADA's purpose for "creating" and selling its information to be inappropriate; in other words, they do not believe that the company should be making a profit from this enterprise. Our Office's investigation clearly shows that infoCANADA does *sell* personal information. However, the investigation also demonstrates that the company does not *create* personal information; rather, it uses personal information that is publicly available.
62. I would note that, in making telephone directory information publicly available, Parliament recognized that it could and would be used for commercial marketing purposes. I am satisfied that the use of such publicly available information by infoCANADA does not violate the reasonable person test as described in subsection 5(3).

Conclusion

63. Accordingly, the complaint regarding consent is not well-founded.

Openness

64. InfoCANADA provides information on its web site regarding the management of customer personal information. This information is also available to callers and e-mail users upon request.
65. However, the web site does not provide information on infoCANADA's policies and practices regarding its handling of the personal information that it sells. While White Pages information is publicly available, it remains, nevertheless, personal information that must be accounted for under the openness principle. I have therefore determined that infoCANADA does not meet its obligations under Principle 4.8.



Recommended actions

66. In light of the lack of openness with respect to infoCANADA's handling of the publicly available personal information that it collects, before I issue my findings in this complaint, I am recommending that infoCANADA:

- Revise its web site to add information on its privacy policies and practices related to its management of the personal information that it collects through the White Pages or other publicly available sources; and
- Develop material that informs clients and other interested individuals about its privacy policies and practices regarding the management of personal information collected through the White Pages or other publicly available sources.

67. I am asking that I receive, within 30 days of the date of this report, infoCANADA's response in writing, outlining how it intends to implement these recommendations. If infoCANADA has evidence that shows cause why implementing these recommendations is not possible, it must provide this evidence and its plans to implement adequate alternative compliance measures to me within 30 days of the date of this letter. Upon receipt of the requested information, or at the end of the 30-day time period, I will issue my findings.

Other

68. Nonetheless, I do appreciate Ms. Lawson and Ms. Ho's bringing these concerns to the attention of this Office. It has given us an opportunity to explore the issue in detail. At first glance, it appeared as though personal information is being created without consent; however, upon closer examination, I have concluded that this is not the case.
