



Conseil de la radiodiffusion et des  
télécommunications canadiennes

Canadian Radio-television and  
Telecommunications Commission

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29 April 2005

**PROTECTED**

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**[Fax: (613) 562-5417]**

Dear Ms. Lawson:

**Re: Disclosure of personal information on CRTC website**

This is in response to your letter of 20 January 2005, on behalf of the Canadian Internet Policy and Public Interest Clinic (CIPPIC), in which you expressed concerns regarding the Commission's practice of publishing personal contact information of individuals who submit comments to the Commission on issues raised in public processes.

You were of the view that the Commission's practice may violate the *Privacy Act*, but that even if the Commission's practice does not constitute a legal breach, it is unnecessarily and inappropriately privacy-invasive. You identified three problems with the Commission's policy:

- 1) The Commission's default approach of posting personal information online (with notice) does not reflect the reasonable expectation of many – possibly most – individuals when they submit comments.
- 2) The Commission cannot ensure that all individuals submitting comments are aware of the publication policy.
- 3) The Commission's "all or nothing" approach to posting comments and personal information required individuals to make an unnecessary and inappropriate trade-off between their personal privacy on one hand, and the submission of comments to the CRTC (or the public posting of those comments) on the other hand.

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Canada

You indicated your intention of obtaining the Office of the Privacy Commissioner's opinion of the matter. However, before doing so, in an attempt to come to a mutually agreeable solution regarding the Commission's practice, you proposed the two following alternative approaches that would, in your view, better meet the spirit and the terms of the *Privacy Act*:

- 1) To strip comments made by individuals of names and contact information before posting them on the Commission's website, unless explicitly requested otherwise by the individual.
- 2) To adopt a default policy of posting the individual's name, but not their contact information, along with the comment. Under this approach, individuals should be able to opt-out of having their names posted, and could be given the option of having their contact information posted. This approach would entail a review, by the Commission, of each of the methods by which individuals can submit comments to it, so as to ensure that its policy of posting names (together with comments) online is brought to the attention of those submitting comments, to the extent possible.

You have also indicated that implied consent should be limited to that which can be reasonably assumed in the circumstances, and deemed consent should be limited to that which fairly balances the public interest in knowing who has made comments against the privacy interest of those making the comments.

### **The Commission's current practice**

First, we want to thank you for giving us the opportunity to provide our view on this matter.

The Commission's privacy statement regarding personal information on our web site reads as follows:

All information that you submit as part of a public process, including your E-mail address, name and any other personal information you provide becomes part of the public record and can be viewed on the Commission's Web site. Documents sent in electronic format will be put on the Commission's Web site exactly as we receive them, and in the official language and format in which they are sent. Documents not received electronically will be scanned and put on the Web site.

### ***Telecommunications proceedings***

With respect to telecommunications proceedings, in addition to the privacy statement on our web site, each Telecom Public Notice initiating a public proceeding contains a section detailing the procedure and instructions for those wishing to comment, such as deadlines for comments, the Commission's address, and email and fax number. That section also contains, under a heading titled "important" in bold, the following notice:

All information submitted, including your email address, name and any other personal information as provided, will be posted on the Commission's web site. Documents received in electronic format will be posted on the Commission's web site exactly as you send them, and in the official language and format in which they are received. Documents not received electronically will be available in .pdf format.

It is our view that persons wishing to comment on a matter that is the subject of a public notice proceeding would generally read public notices. These notices specify how and when to file and the deadline for filing comments. They may also include other useful information, such as the current framework regarding the issue, Commission views and, in certain cases, the views of parties that might have triggered the public process. In order to gather information on the issues at stake, an intervener would generally have had to review this notice.

In addition, in telecommunications proceedings, as you have correctly indicated in your letter, the Commission notifies those who submit comments via its web form that their information will be posted online, via a pop-up window that appears and must be clicked on before the individual can proceed with his or her comment. The notice reads as follows:

The information you provide will be used by the CRTC for the purpose for which it was provided or compiled, or for a use consistent with that purpose. However, as the information provided will be on the public record and posted on our website, the CRTC is not liable for use of this information by any other party for any other purpose.

Those who submit comments by e-mail at the address [procedure@crtc.gc.ca](mailto:procedure@crtc.gc.ca) are notified by an auto-generated reply message which reads as follows:

All information submitted, including your email address, name and any other personal information as provided, will be posted on the Commission's web site. Documents received in electronic format will be posted on the Commission's web site exactly as you send them, and in the official language and format in which they are received.

For those who submit comments by fax or mail, they would have to rely on the Public Notice for the instructions concerning the deadline for comments, Commission address and fax numbers, as well as information concerning the subject matter regarding which they are commenting. As pointed out above, each Public Notice contains a section with instructions for filing comments, as well as the notice quoted above, with the heading "important" in bold. However, we would like to point out that the majority of the interventions are submitted by e-mail or web forms.

### *Broadcasting proceedings*

Regarding broadcasting public proceedings, in addition to our web site privacy statement, contrary to what you have indicated in your letter, the Commission's web site, since 2002, contains a notice that the information provided will be posted on its web site. The following statement appears on each Notice of Public Hearing and/or Public Notice published by the Commission, which provides detailed instructions for persons wishing to intervene;

All information submitted, including your email address, name and any other personal information as provided, will become part of the public record and can be viewed on the Commission's Web site. Documents sent in electronic format will be put on the Commission's Web site exactly as we received them, and in the official language and format in which they are sent. Documents not received electronically will be scanned and put on the Web site.

As you have correctly indicated, interveners using the e-mail address [procedure@crtc.gc.ca](mailto:procedure@crtc.gc.ca) receive an auto-generated reply message. This message also contains the following notice:

All information submitted, including your email address, name and any other personal information as provided, will be posted on the Commission's web site. Documents received in electronic format will be posted on the Commission's web site exactly as you send them, and in the official language and format in which they are received.

Interveners using the "Intervention/comments form" on the Commission's web site find the following text<sup>1</sup>:

- a) in step 5 "Identification", at the top of the page (with the word "important" written in bold, and the text written in red):

*Note that all the information provided within this form, including your email address, name and any other personal information as provided, will be posted on the Commission's web site.*

- b) in step 6 "Confirmation", at the bottom of the page (written in red), just before clicking on the Submit button:

*You are reminded that all information provided in this form will be posted on the Commission's web site.*

- c) in the auto-generated reply message that they will receive (with the word "IMPORTANT" above the text):

*You are reminded that all information provided in the form submitted, including your email address, name and any other personal information as provided, will be posted on the Commission's internet site.*

In broadcasting, virtually all proceedings are commenced by a Public Notice and/or a Notice of Public Hearing. For those who submit interventions by fax or mail, they would have to rely on the Notice of Public hearing and/or Public Notice for the instructions concerning procedure and the deadline for interventions, Commission's address and fax numbers, as well as information concerning the application regarding which they are intervening. As pointed out above, each Notice of Public Hearing and/or Public Notice contains a section with instructions for filing interventions, as well as the statement quoted above, with the heading "important" in bold.

In addition, the Commission, when required by its rules regarding broadcasting public hearings, publishes the following message in newspapers:

If you wish to support or oppose an application, you may use **ONE** of the following options: select the link to the "*Intervention/Comments Form*" found under the "Public Proceedings" section of the CRTC's website; or write to the CRTC, Ottawa, Ont., K1A 0N2; or send a fax to the Secretary General at (819) 994-0218. Your intervention must be received at the CRTC on or before           2005 and **MUST** include the proof that you sent a copy to the applicant. All information submitted, including your email address, name and any other personal information as provided, will be posted on the CRTC's website. For more information: 1-877-249-CRTC (Toll-free) or Internet: <http://www.crtc.gc.ca>. Reference document: Public Notice CRTC 2005-

Finally, applicants have an obligation to broadcast certain information relating to their applications. At the time of issuance of a Notice of Public Hearing and/or a Public Notice, the Commission sends a letter to applicants, providing information on this requirement

<sup>1</sup> Prior to April 2005, people wishing to intervene using this form would have seen the same statement that appears on a Notice of Public Hearing and on a Public Notice, with the word 'important' in bold at the top of the form.

along with suggested wording to be used in the broadcast. Recently, the letter was amended as to include the following wording to be used in that broadcast:

Please note that all information that you submit as part of a public process, including your E-mail address, name and any other personal information you provide becomes part of the public record and can be viewed on the Commission's Web site. Documents sent in electronic format will be put on the Commission's Web site exactly as we received them, and in the official language in which they are sent. Documents not received electronically will be scanned and put on the web site.

### **Commission's view on alternate approaches proposed by the CIPPIC**

The Commission publishes the name and contact information of participants in a public proceeding in an attempt to have public processes that are as fair, transparent and effective as possible. In order to have meaningful public proceedings, it is paramount that all participants know who has made comments.

As you are probably aware, in order to achieve its objective of fairness, transparency and effectiveness the Commission is maximizing the use of electronic filings and documenting.

Publishing the information electronically is increasing the ability of the industry and the public to be made aware of and keep updated on Commission proceedings. Of course, a paper copy of all filings is available for consultation at the Commission's offices.

Your proposal to strip comments made by individuals of names and contact information before posting them on the Commission's website, unless explicitly requested otherwise by the individual, would result, in our view, in disadvantages to the public, and in an increased administrative burden on the Commission. It would mean that participants in a public proceeding might not be able to respond to the comments in a timely fashion. In order to properly respond, these parties would have to request the unabridged version of the comment from the Commission. This in itself would also create a difficulty given the sometimes short deadlines. In addition, removing the name and contact information would prove to be a challenge in terms of the workload it would entail (physically blocking out that information from emails, faxes and paper filings). In our view, this would create an unreasonable delay in posting the information on the web and would also delay public proceedings.

You indicated that under your proposal to adopt a default policy of posting the individual's name, but not their contact information, along with the comment, individuals should be able to opt-out of having their names posted, and could be given the option of having their contact information posted. In addition to creating the same challenges as expressed above, this proposition would entail the development of a system to allow for the possibility of opting out of giving some information. This would prove to be difficult in the case of faxed or mailed interventions as the Commission does not acknowledge the comments received.

Either way of proceeding would also, in our view, create an unfair disadvantage to the parties that are not located nearby a Commission documentation center (e.g. National Capital Region), as only the paper filing would contain the complete information. Parties located near a Commission office could have access without delay to the complete file, whereas parties outside of the region would be faced with a delay in receiving the information in visiting a Commission office or requesting the information. It would also

result in two levels of "public", the public who could afford the time and cost of travel to review the paper file, i.e. the "real file", and the others who might not have the time and means, and could only view a truncated file online.

The name and address of those who file submissions in public proceedings are part and parcel of their submissions. The Commission believes anyone is entitled to review and evaluate the entire submission. Our concern is not a fanciful one. Names and addresses have been useful to parties and the public by allowing them to identify forged interventions or to judge the reliability of the statements found in the interventions. For example, statements of day to day quality of coverage made by persons not living in the coverage area, statements made by employees or relatives of competitors or former employees of an applicant, etc.

In our view, it is not unreasonable to assume that individuals who decide to participate in a Commission public proceeding choose to do so deliberately. Since they are participating in a public proceeding one would expect that they would assume that their entire submission would be public. In our view, it is reasonable to assume that, in most cases, individuals wishing to comment would have been exposed to the Commission's many privacy statements and warnings, even in the case of the individuals who ultimately file by fax or by mail. It is also our view that in the context of Commission public proceedings, the publication of this information is in the public interest and it is being made public in a manner that is consistent with the privacy legislation.

We hope that this response is satisfactory in addressing your concerns and explaining the Commission's view on its practice.

Yours sincerely,

**ORIGINAL SIGNED BY**  
**John Keogh for/**

Diane Rhéaume  
Secretary General