



Canadian Internet Policy and Public Interest Clinic  
Clinique d'intérêt public et de politique d'internet du Canada

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Diane Rhéaume  
Secretary-General  
Canadian Radio-Television and Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

BY MAIL

Dear Ms. Rhéaume:

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

This letter is written on behalf of the Canadian Internet Policy and Public Interest Clinic (CIPPIC). We are concerned about the Commission's practice of publishing personal contact information of individuals who submit comments to the CRTC on issues raised in public processes. We believe that this practice may violate the *Privacy Act*, but that even if it does not constitute a legal breach, it is unnecessarily and inappropriately privacy-invasive. We propose two alternative approaches that would, in our view, better meet the spirit, as well as the terms, of the *Privacy Act*.

Before raising this issue with the Office of the Privacy Commissioner, we wish to give you an opportunity to consider our proposal and to see if we can come to a mutually agreeable solution.

**Facts**

The following are the relevant facts as we understand them, based on our review of the CRTC website as well as on an incident that recently came to our attention.

The CRTC receives comments from members of the public on various issues, often in relation to public processes that the Commission (or another party) has initiated. Individuals can submit comments to the CRTC in a variety of ways, including postal mail, fax, e-mail, and via a comment form on the CRTC's website. As noted in its "Privacy Statement",

*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.*

This notice is posted on the CRTC website, and since 2004, a slightly modified version of it has been included in Public Notices inviting public comment.

In addition, the Commission notifies those who submit comments via its webform for telecommunications proceedings of the fact 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 text in that window 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.*

Individuals proceeding to comment via this webform are required to provide their name, address (street, city, and postal code), and telephone number. Comments will not be accepted via the webform unless this information is provided, even if the individual selects the option "please contact me by e-mail".

Those who submit comments via the CRTC's webform on broadcasting proceedings confront a markedly different interface. In this case, there is no notice that the information provided will be posted on the CRTC website. There is, however, a bolded statement: "We need the following information to get in touch with you". First and last name are mandatory. Depending on the method of contact that the person requests, email address, postal address, or telephone number are also mandatory.

Finally, individuals who submit comments by e-mail now receive an auto-generated reply message stating as follows:

*[English below]*

*Ceci est un accusé de réception automatique de votre message. Si une réponse est requise, nous communiquerons avec vous le plus tôt possible.*

*Si vous soumettez en direct n'oubliez pas d'envoyer l'original par télécopieur ou par la poste pour tous les documents suivants : **demandes, réponses aux interrogatoires, réponses complémentaires et de divulgation.***

*Toute information soumise, incluant votre adresse courriel, votre nom ainsi que tout autre renseignement personnel que vous nous aurez fourni, sera disponible sur le site web du Conseil. Les documents soumis en format électronique seront affichés sur le site web du Conseil tels quels et dans la langue officielle et le format qu'ils ont été soumis.*

*Merci*

*Groupe de dépôts réglementaires électroniques  
CRTC  
(819) 953-8142  
TDD 1-877-909-2782 (toll-free)*

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*This is an automatic confirmation that we have received your message. If a response is required, we will contact you as soon as possible.*

*If you submit online, remember to send the original by fax or regular mail for any of the following: **applications, responses to interrogatories, requests for public disclosure.***

*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.*

*Thank you*

*Electronic Regulatory Filing Group  
CRTC  
(819) 953-8142  
ATME 1-877-909-2782 (sans frais)*

We are aware of one case in which an individual sent comments to the CRTC by e-mail some years ago, after hearing a news story on an issue being considered by the CRTC at that time. Her comments were treated by the Commission as responding to the Public Notice on that issue, and were posted on the CRTC website. Almost four years later, she was contacted by a complete stranger who informed that her personal contact information (name, phone number, fax number, e-mail address, city and province) was publicly available on the CRTC website.

The individual was shocked and dismayed. She immediately contacted the Commission by e-mail and asked that her name and contact information be taken down. In reply, she was informed that her message had been received in the context of a Public Notice, a paragraph of which stated:

*The Commission will make comments filed in electronic form available on its web site at [www.crtc.gc.ca](http://www.crtc.gc.ca) in the official language and format in which they are submitted. This will make it easier for members of the public to consult the documents.*

The CRTC message further stated:

*I regret that you were not aware your message was going to be posted on our website. If you wish to have this information removed, please contact our Procedures group at [procedure@crtc.gc.ca](mailto:procedure@crtc.gc.ca).*

The individual responded as follows:

*If it was not clear from my email of yesterday, this is to confirm that I do want my identifying information removed. I have no problem with you leaving the message I wrote since we can all learn from what Canadians have to say on this issue. However, I want any identifying information removed.*

*Since my original post of March 2001 shows "Yes" to privacy, I would like to know what the purpose of the "privacy" indicator is if it is not respected?*

*Regarding the general issue of personal submissions being posted as a matter of default, based on a general notice in the Public Notice (PN), many if not most people are likely unaware of this. A more privacy-respectful approach, in keeping with the CRTC's public information mandate, would be to publish submissions without the identifying information (i.e., take out the name and address of individual submitters).*

In reply, another CRTC staff person sent her an e-mail message stating:

*Further to your request, please note that your comment/name has been removed from the CRTC Web Site.*

The individual clarified in a subsequent e-mail message to the CRTC that her request was for removal of her personal information only, not removal of the comment entirely. She stated:

*I can't tell from your reply whether you removed my comment or name -- or both. In my earlier email to you, I was very specific, stating that my comment serves the public as it serves the CRTC. To remove the comment entirely skews what people read at your site -- which certainly is not in the interest of anyone.*

*All I wish is that you remove my co-ordinates.*

As far as we know, no further action was taken.

Attached is a print-out of the individual's comment and personal information as it appeared on the CRTC website. It is worth noting that we obtained this information via a Google search after the posting had been taken down; in other words, removing the posting from the CRTC website does not remove it from the Internet generally. The CRTC's Privacy Statement makes note of this.

### **Issues:**

Our review of the Commission's policy of posting personal information online, and of the individual case described above, suggests that there are three problems with the 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. This is particularly true in the case of comments sent in by fax or postal mail. It is also true of comments sent in by e-mail, since (a) the notice is sent only after the comment is received, and (b) the notice is contained in a standard form, auto-generated, bilingual message that includes other highlighted information. Therefore, the Commission should not assume that individuals have consented to the posting of their personal information online.
3. The Commission's "all or nothing" approach to posting comments and personal information requires 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.

### **Privacy Concerns**

Once information is posted on the Internet, it is available for anyone with Internet access to view. As noted above, it can remain accessible to the world via search engines even after it has been taken down from a website. Being able to access information from anywhere in the world by simply searching the Internet, or visiting the CRTC website, is fundamentally different from being able to access information by visiting a CRTC public examination room in person or by requesting and purchasing hard copies of the material in question. Clearly, the limits on Internet access are much fewer than the limits on hard copy access.

Moreover, once personal information is posted on the Internet, it is vulnerable to automated collection by spammers and others intent on collecting it for fraudulent and other undesirable purposes. It is well-known, for example, that spammers routinely troll the Internet for e-mail addresses, using automated "e-mail harvesting" programs. Other personal information is equally vulnerable to abuse once publicly available on the Internet. The Internet presents opportunities for information collection and abuse that simply do not exist in the offline world.

As in the offline world, the CRTC has no control over how personal information collected from its files is used. This is good reason to limit disclosure of personal information in the offline world, but because of the unprecedented exposure that the Internet provides, it is much greater reason to limit online disclosure.

### **Legality of the CRTC Policy and Practice**

We are of the view that the CRTC's practices fall afoul of spirit, if not the technical requirements, of the *Privacy Act*. Section 8 of that Act states:

*(1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.*

Section 8 lists a number of exceptions, of which only one (subs.8(a)) is potentially applicable here:

*...for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose.*

In other words, the purpose of the disclosure must be one that is consistent with the purpose for which the information was originally collected. We understand the purpose of collection to be two-fold:

- a) in order to ensure accountability for comments made, and hence to support the integrity of the CRTC's public comment process; and
- b) in order for the CRTC to be able to contact those who send in comments (as stated, for example, on the broadcasting webform).

In neither case is the public posting of individual contact information necessary for the achievement of the purpose. Contact-ability and accountability are achieved by the CRTC receiving such information; they do not require publication of personal contact information to the world. Indeed, when individuals provide personal contact information in correspondence directed solely to the Commission, it can be assumed that they intend to share that information solely with the CRTC. In this context, it would be a stretch of legislative intent to argue that sharing such personal information publicly on the CRTC's website is "consistent with" the purpose of collection.

Section 8 also permits disclosure of personal information with consent. In our view, such consent must be meaningful. It cannot be implied or deemed unless factual circumstances warrant such an implication or deeming.

We have set out above, under "Facts", the methods by which the Commission currently purports to obtain consent. The consent obtained through some of these methods cannot be considered

meaningful. First, the CRTC does not (despite an assertion to the contrary in its "Privacy Statement") ever ask individuals for their consent to the posting of their contact information. Rather, it relies upon various notices of its policy, as set out above. However, there are many ways in which individuals can submit comments without ever seeing the notice. They may never visit the CRTC website. They may never be aware of a Public Notice, let alone the specific paragraph within it that addresses this issue, instead commenting on the basis of news stories. Those who send in comments by e-mail may not notice the auto-reply message, or the specific notice therein about posting of personal information.

Moreover, the CRTC provides no option for commenting on a public notice via the Internet without providing personal information that will be posted. The form for telecommunications comments – which seems to be the preferred method of receiving comments – has mandatory address and telephone number fields, despite the fact that someone may choose to be contacted via e-mail. This mandatory publication of personal contact information from everyone who submits comments is, in our view, unduly privacy invasive and unlikely to reflect the reasonable expectations of those who send comments.

Given the privacy concerns raised by posting personal contact information on the Internet, it is questionable why personal contact information is not stripped from public comments as a matter of course before they are posted on the CRTC website. (An examination of the CRTC's online comment archives show some comments have no identifying information save a name; it is unclear how and why these comments, but not others, were stripped of personal contact information.)

In our view, the CRTC cannot assume consent to the posting of personal contact information on the basis of its current notices – or even on the basis of improved notices. Many people commenting on public processes will no doubt always be unaware of the policy. It is unreasonable to expect them to be aware of the policy, and it is unfair to assume that they have consented in these circumstances.

For all these reasons, it is our view that the current CRTC policy of posting the names and contact information of individuals who submit comments on public processes does not meet the *Privacy Act's* requirements of either consent or "consistent use".

### **Best Practices**

Regardless of whether the Commission's policy is compliant with the *Privacy Act*, it does not in our view constitute appropriate government practice given the significant privacy implications of posting personal information on the Internet, and the relatively minor benefits of permitting public access to the contact information of persons who comment on CRTC public processes.

We were particularly surprised to learn of this policy, given the obvious alternatives open to the Commission, and given the Commission's mandate under the *Telecommunications Act* "to contribute to the protection of privacy of persons" (subs.7(i)).

### **Proposal**

We therefore propose that the CRTC revise its policy regarding the treatment of the personal contact information supplied by individuals commenting on public processes, in keeping with privacy laws and best practices, as well as the Commission's mandate of protecting the privacy of

persons. 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.

An appropriate and reasonable policy regarding comments made by individuals would be to **strip such comments of names and contact information before posting on the CRTC website, unless explicitly requested otherwise by the individual.**

A less privacy-protective, but still much improved policy would be 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 name posted. They could also be given the option of having their contact information posted. Under this approach, the Commission should review 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.

### **Further action**

We would like to refer this issue to the Privacy Commissioner in order to get her opinion on it; however, we are contacting you first in order to let you know of our concerns and to give you an opportunity to take action.

Thank you for your time and attention to this letter. We await your response to our concerns. Please feel free to contact us at any time if you have any questions.

Sincerely,

*original signed*

Philippa Lawson, Executive Director

cc: John Keogh, CRTC General Counsel

Attach.

*original signed*

Alison Gardner, LL.B., CIPPIC Intern