News

Personal information received on an unsolicited basis is not “collected”

Date: September 8, 2011

The Information and Privacy Commissioner of Ontario issued a notable privacy investigation report this past summer under of the *Municipal Freedom of Information and Protection of Privacy Act* (the “*Act*“). The complainants complained, amongst other things, that the Municipality in issue had improperly collected their personal information contained in correspondence they sent to the Municipality, in contravention of the *Act*.

Investigator Ratner found that the Municipality did not “collect” personal information under the *Act* when it received unsolicited correspondence. This finding was based on an interpretation of the language in the *Act*, which distinguishes between personal information having been “obtained or compiled” by an institution and being “collected” by an institution. Investigator Ratner recognized that personal information may come into the custody or control of an institution in a number of ways: it may be actively solicited, it may be passively received, or it may be created by the institution. The phrase “obtained or compiled” is intentionally broad, and intended to accommodate the various ways in which an institution may acquire personal information.

The phrase “obtained or compiled” is used in the context of use and disclosure obligations, which apply regardless of how information comes into the custody or control of an institution, as opposed to the term “collect” that is used in the context of collection obligations, which apply only to personal information that is actively sought or created by an institution.

This decision has great significance for institutions that receive unsolicited personal information and confirms that it will not be considered to have been “collected” for the purposes of the corresponding collection obligations under the *Act*.

Vaughan (City) (Re), 2011 CanLII 47522 (ON IPC)

For more information, please contact Mireille Khoraych at 416.864.7356 or your regular Hicks Morley lawyer.