



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

VIA ELECTRONIC MAIL & ONLINE SUBMISSION

November 18, 2021

Natalia Kusendova,
Chair of the Standing Committee on Social Policy
Legislative Assembly of Ontario
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Dear Chair Kusendova:

RE: Written Submission to the Standing Committee on Social Policy of the Legislative Assembly of Ontario: Schedule 4 of Bill 27, the *Working for Workers Act, 2021*

As the Officer of the Legislature with a mandate to protect the privacy and transparency rights of Ontarians, I urge the Committee to amend Bill 27 to address an important issue in the way that one of its provisions approaches the collection and use of personal information. My submission contains options that I believe would enable effective governance while respecting privacy.

If passed, Schedule 4 of Bill 27 would grant an authority to the Minister of Agriculture, Food and Rural Affairs to collect and use personal information for any purposes related to the Minister's present or future functions. This proposed authority is overly broad — it seeks a blank cheque from the Legislature when it does not seem that a blank cheque is required to achieve the Bill's objectives. The proposed blanket authority is also at odds with the approach to privacy protection set out in the *Freedom of Information and Protection of Privacy Act* (FIPPA).

The issue relates to paragraph 1 of the proposed new subsection 4.1 (2) of the *Ministry of Agriculture, Food and Rural Affairs Act* (the Act):

Collection, use

(2) Subject to the regulations, the Minister may collect information, including personal information, directly or indirectly, for the following purposes and may use it for those purposes:

1. To exercise the powers and carry out the functions set out in section 4.
2. To support Canadian, provincial or municipal responses to urgent public health or public safety concerns related to agriculture, food or rural affairs.
3. To plan for or respond to emergencies related to agriculture, food or rural affairs.



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4. To further such purposes related to agriculture, food or rural affairs as may be prescribed for the purpose of this subsection.

The Minister's powers and functions in section 4 of the Act are very broad and include the direction and control of the administration of the law relating to agriculture, food and rural affairs in all their branches.

Schedule 4 of Bill 26 further expands these powers and functions to include reviewing matters related to agriculture, food and rural affairs; and establishing policies and providing recommendations, advice, coordination and assistance to the government in matters related to agriculture, food and rural affairs.

As a result, the proposed authority to collect personal information (directly or indirectly) would extend to any purpose the Minister could conceivably have related to their mandate now or at some later time. In other words, Schedule 4 of Bill 27 risks creating an authority to collect and use personal information for purposes that are not specifically defined and not clearly limited. The Bill, as currently worded, risks creating an unfortunate precedent that would infringe upon Ontarians' privacy rights in a manner that is not necessary, proportionate or justified relative to the Bill's aims.

I would like to recognize some positive aspects of Schedule 4. In particular, I welcome the data provisions in subsections 4.1 (3) and (4) that prohibit the collection, use and disclosure of personal information if other information will serve the purpose, and only to extent reasonably necessary to serve the purpose. However, these protective guardrails are effectively diluted when "the purpose" is defined so broadly. While these provisions may provide a measure of protection, they do not cure the lack of clarity and transparency in the information practices of the Minister and those tasked with carrying out the powers and functions of the Minister that would result from the new subsection 4.1 (2).

The new section 4.1 (2), as drafted, may also end up operating in a way that undermines rather than advances the objectives of the Ministry of Agriculture, Food and Rural Affairs (the Ministry). There might be uncertainty, and therefore hesitancy, within the Ministry about whether such a broad grant of authority has the legal effect of authorizing particular collections of personal information for the purposes of s. 38 (2) of FIPPA. That section of FIPPA prohibits the collection of personal information on behalf of an institution unless the collection is "expressly authorized by statute" (among other grounds). While the apparent aim of subsection 4.1 (2) may be to provide broad power for the Minister to collect and use personal information, it may not provide sufficient certainty, guidance, and clarity to the Minister and those acting on behalf of the Minister to proceed confidently with the collection or use of personal information in a given circumstance.

I recommend that the Committee amend Schedule 4 of Bill 27 to place meaningful limits on the authority to collect and use personal information. This could be achieved by:

- re-drafting paragraph 1 of subsection 4.1 (2) to limit and define the scope to address the Minister's specific desired purposes for the collection and use of personal information or,

if paragraphs 2 and 3 adequately address the desired objectives, deleting paragraph 1 altogether;

- re-drafting paragraph 4 of subsection 4.1 (2) to narrow the scope of the regulation making authority to further limit the purposes that may be prescribed in regulation to those that are directly related to the Minister's specific desired objectives; and,
- providing for a transparent and public regulation making process in the Act, similar to section 74 of the *Personal Health Information Protection Act* and section 65.2 of FIPPA.

I appreciate the opportunity to make this submission with a view to enabling the Bill's overarching objectives to assist with matters involving urgent public health or emergencies related to agriculture, food or rural affairs, while also protecting the privacy of Ontarians. I would be pleased to answer any questions you may have in connection with our recommendations above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Kosseim', with a stylized flourish underneath.

Patricia Kosseim
Commissioner