

Order No. PP-07-003

Re: Department of Social Services and Seniors

**Prince Edward Island Information and Privacy Commissioner
Karen A. Rose, Acting Commissioner**

October 2, 2007

I. BACKGROUND

On December 8, 2006, this office received a written complaint relating to the Disability Support Program (the “DSP”) and, more particularly, the DSP Screening Tool form (“the DSP Screening Tool”) used by the DSP. The Complainant states that 70% of the information collected by the DSP Screening Tool is personal information which does not relate directly to the DSP, nor is it necessary for the operation of the DSP. The Complainant claims that the majority of this information is not a determinant of the level of support received from the DSP by a DSP client.

This is one of several complaints that have been received by this office relating to the DSP, with decisions being issued in 2004 under Orders PP-04-001, PP-04-002, PP-04-005, and in 2006 with Investigation Report PP-06-004.

By letter dated December 20, 2006, this office requested the Public Body respond to the Complainant’s claim that much of the information being collected through the DSP Screening Tool is not necessary for the DSP, and to include an explanation of the authority and purpose of the collection of each item of personal information that is asked for by the DSP Screening Tool.

On January 26, 2007, the Public Body provided the requested submissions, attaching an appendix which provides its explanation of the purpose and authority for the collection of each item found in the DSP Screening Tool, an Individual Support Agreement form, a completed short-form Privacy Impact Assessment (“PIA”) on the DSP Screening Tool, and the related legislation, being the *Rehabilitation of Disabled Persons Act* and the *Social Assistance Act* and regulations.

Upon providing the Complainant with a copy of the submissions and attachments of the Public Body on February 12, 2007, this office received a preliminary response from the Complainant on February 16, 2007, and a more detailed response on April 26, 2007.

In addition to the submissions provided by the parties, further information was gathered through a meeting held between myself and the Public Body on February 22, 2007, and myself and the Complainant on August 9, 2007. A brief, final reply was received from the Public Body on September 10, 2007.

II. ISSUES

The issues raised by this complaint include:

1. Is the information collected for the DSP via the DSP Screening Tool considered “personal information” as defined in section 1(i) of the *Freedom of Information and Protection of Privacy Act* (the “FOIPP Act”)?

2. If Issue #1 is answered in the affirmative, is personal information collected by the Public Body via the DSP Screening Tool expressly authorized by or under an enactment of Prince Edward Island, pursuant to subsection 31(a) of the *FOIPP Act*?
3. If Issue #1 is answered in the affirmative, is personal information collected by the Public Body via the DSP Screening Tool directly related to and necessary for the operation of the DSP, in accordance with subsection 31(c) of the *FOIPP Act*?
4. If Issue #1 is answered in the affirmative, does the Public Body collect personal information from participants of the DSP via the DSP Screening Tool, in contravention of any other subsection of Part II of the *FOIPP Act*?

III. INFORMATION GATHERED DURING THE INVESTIGATION

Much personal information is collected by the Public Body for the DSP via several forms, including an intake record, agreements between the client and the Public Body, planning tools, and financial information forms. As noted above, the form at issue in this complaint is the DSP Screening Tool.

The DSP Screening Tool

There are 60 questions set out in the DSP Screening Tool. The Public Body states that it is an objective tool which was not drafted by the Public Body, but “borrowed” from another jurisdiction which used the tool for determining the level of function of disabled persons. The Public Body chose this tool as the best alternative of several which it reviewed for the implementation of the DSP.

The DSP Screening Tool is a nine-page questionnaire which scores clients in the areas of memory, behaviour/psychosocial, functional abilities, instructional activities of daily living, nutrition, medication, safety, and community integration. In practice, the DSP Screening Tool is always used to measure the level of function of a DSP client and, in turn, to determine the needs of the client which can be addressed by the DSP. The questions on the DSP Screening Tool are repeated on a yearly basis.

The DSP Screening Tool consists of the following categories of questions, in order:

- (i) Ten questions with the heading “Memory”;
- (ii) Ten questions with the heading “Behaviour/Psychosocial”;
- (iii) Eighteen questions with the heading “Function”;
- (iv) Nine questions with the heading “Instructional Activities of Daily Living”;
- (v) Four questions with the heading “Nutrition”;
- (vi) Two questions with the heading “Medication”;
- (vii) Three questions with the heading “Safety”; and
- (viii) Four questions with the heading “Community Integration”.

Case workers use a numerical scoring technique based on responses to each question.

The Complainant points out, correctly, that scores are calculated by section and level of capability, determined as a percentage by dividing the score achieved by the perfect score for that section. For example, in the first section, "Memory", there are 10 “yes” or “no” answers, with “yes” getting a score of “1” and “no” a score of “0”. The results are added and divided by 10 to achieve a percentage score.

The Public Body advises that the DSP Screening Tool is applied after a client is approved as eligible for the DSP. To be eligible, the client must submit an application, have provided a Revenue Canada Notice of Assessment as proof that their net income falls within the DSP's defined range, and may also be asked to provide a letter from their physician verifying their disability.

The Public Body further advises that the DSP is a social program with a financial component (this statement is disputed by the Complainant, as discussed later in this order) and that the DSP Screening Tool is used to collect information to determine the severity of a client's disability and unmet needs associated with the disability. The unmet needs related to the disability are then linked to payment. The Public Body states that the tool is useful to ensure equitable payment among clients. The DSP Screening Tool has been referred to as a Functional Independence Measurement (FIM) in past and some clients continue to use this name when referencing it.

It is important to note that the DSP Screening Tool has not been used in an identical manner from district to district or, in some cases, from case worker to case worker. Mainly, there is a difference in the number of questions which may be asked of clients. There are two main reasons for the disparity in the way the DSP Screening Tool is used. Firstly, the DSP Screening Tool was implemented when there were regional health authorities, not one central body as there is now, and for that reason there may be some differences between geographical regions. The second reason for inconsistency is simply the personal choices of the individual case workers. Some case workers use the entire DSP Screening Tool so that every single question is asked every single time to maintain consistency with all clients. Other case workers use their judgment to decide. For example, if the client's disability is solely physical, then it may not be necessary to ask questions relating to intellectual disabilities.

IV. ARGUMENTS AND FINDINGS

Is the information collected for the DSP via the DSP Screening Tool considered “personal information” as defined in section 1(i) of the *FOIPP Act*?

The Complainant contends that most of the information on the DSP Screening Tool form is "personal information" in accordance with section 1(i)(vi) of the *FOIPP Act*. Personal information is defined in section 1(i) of the *FOIPP Act*, the relevant clauses as follows:

1. In this Act

- • •
(i) “personal information” means recorded information about an identifiable individual, including
 - • •
(i) the individual’s name, home or business address or home or business telephone number,
 - • •
(iii) the individual’s age, sex, marital status or family status,
 - • •
(vi) information about the individual’s health and health care history, including information about a physical or mental disability,
 - (vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,
 - • •
(ix) the individual’s personal views or opinions, except if they are about someone else;

Based on the above definition, I conclude, as I did in Investigation Report PP-06-004, that the Public Body collects personal information of clients of the DSP, via the DSP Screening Tool, which personal information falls under subsections 1(i)(i), (iii), (vi), (vii), and (ix) of the *FOIPP Act*. It includes name, address, telephone number, personal health number, gender, marital status, date of birth, possible criminal history, possible personal opinions and significant information relating to the nature and impact of the client's disability.

Now that I have found that the DSP Screening Tool does collect personal information from clients, including the Complainant, I will move to an analysis of whether the collection complies with Part II of the *FOIPP Act*.

Is personal information collected by the Public Body via the DSP Screening Tool expressly authorized by or under an enactment of Prince Edward Island, pursuant to subsection 31(a) of the *FOIPP Act*?

In an appendix attached to the submissions of the Public Body (as well as in its short form PIA), it cites the following as authority for its collection of personal information under each heading of the DSP Screening Tool:

FOIPP Act, Section 32(1)(g)(i): to determine the eligibility of an individual participate in the (DSP) program and to receive a benefit, product or service.

Rehabilitation of Disabled Persons Act, section 3(f): to plan, develop, operate and manage any project or enterprise for the rehabilitation of disabled persons.

Social Assistance Act, section 3(a): to plan, develop, operate and manage any project or enterprise that has as its object to render recipients of assistance capable of self support, and

Social Assistance Act, section 3(b): to make grants to any organization, group or body of citizens for the purpose of providing assistance to persons in need or likely to become in need.

FOIPP Act, subsections 31(a) and (c): as authority for collecting the personal information at issue.

Subsection 31(a) of the *FOIPP Act* states as follows:

31. No personal information may be collected by or for a public body unless

(a) the collection of that information is expressly authorized by or under an enactment of Prince Edward Island or Canada;

Thus, in order to satisfy subsection 31(a) of the *FOIPP Act*, the Public Body must show that the statute(s) cited contains an express authorization to collect the personal information at issue. These same subsections were cited by the Public Body in Investigation Report PP-06-004. Once again, I have reviewed the cited sections of the *Rehabilitation of Disabled Persons Act* and the *Social Assistance Act*, and conclude that these authorities do not expressly authorize the collection of personal information by the Public Body from clients of the DSP. They merely provide general powers to operate the DSP.

Therefore, I find that section 31(a) of the *FOIPP Act* does not apply to the collection of personal information by the DSP Screening Tool. The Public Body may still be justified in its collection of the Complainant's personal information by application of subsection 31(c), which leads to the analysis below.

Is personal information collected by the Public Body via the DSP Screening Tool directly related to and necessary for the operation of the DSP, in accordance with section 31(c) of the *FOIPP Act*?

The central question at issue is whether the personal information collected by the DSP Screening Tool relates directly to and is necessary for an operating program of the Public Body, in accordance with subsection 31(c) of the *FOIPP Act*. It is this subsection which forms the bulk of the parties' arguments.

Subsection 31(c) of the *FOIPP Act* states as follows:

31. No personal information may be collected by or for a public body unless

...

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

I found in Investigation Report PP-06-004 that basic personal information (such as name, address and contact information), health information relating to the participant's disability, and financial information to determine means, are general categories of personal information which are necessary for operating the DSP. The Complainant has brought forward additional information relating to the necessity of the personal information being collected from the clients of the DSP. This complaint requires me to delve further into the purpose of the DSP and each category of disability-related information which is collected by the DSP Screening Tool.

In order to determine which personal information is necessary for and directly related to the DSP, I must first establish what the DSP actually does. The Public Body states that the DSP is a program which provides a range of disability-related supports to individuals with qualifying disabilities. As it is not an entitlement-based program, clients are expected to contribute to the cost of disability-related support in accordance with their financial means.

I have read the DSP Policy, effective October 1, 2001, revised March 5, 2007, and reviewed July 20, 2007. A copy of the policy was provided to me by the parties and is also available online. Key components of the services provided by the DSP are described in the following paragraphs taken from the policy:

1.1.4 The financial component of the DSP is not intended to provide a living allowance, for which other programs exist, or to duplicate existing funding sources. The financial component of DSP pertains only to disability-related costs: to fund services and supports necessary to enable an individual with a disability to live as independently as possible or to obtain and maintain competitive employment, or to help a family with extraordinary child-rearing support needs directly related to their child's disability.

8.1.1 *Child Disability Supports* - are intended to provide supports and services to families to help meet the special needs costs which relate to their child's disability. These supports are to assist in meeting those costs determined to be above the costs of rearing a child without a disability and which relate directly to the child's disability.

8.1.2 *Adult Disability Supports* - are supports and services designed to assist individuals with disabilities to overcome barriers that may be faced due to having a disability. These supports are intended to assist in meeting those costs determined to be above the costs of living without a disability and which related directly to the disability.

8.1.3 *Employment and Vocational Supports* - are designed to enhance the economic participation of youth (defined in Section 4.1.2 b) and working age adults with disabilities in the labour market by helping them to prepare for, attain and retain employment.

Quoting from the Complainant's submissions, "While the department claims that the DSP is a social program with a financial component, it is in reality a financial program with a social component.". As noted above, the Public Body disagrees. While this may be an argument of semantics, it goes to the parties' perception of the DSP's purpose. It is essential that I determine the purpose of the DSP in order to make accurate findings relating to this complaint.

Based on the submissions of the Public Body, and also based on the DSP Policy above, it is clear that the DSP provides financial support based on functional and financial need. As is described above, the "supports", once determined, result in a financial contribution by the DSP. I find that the central purpose of the DSP is to assist clients with disability-related costs.

To determine need and provide support, the Public Body must determine the functional challenges of the client. The DSP has chosen the DSP Screening Tool to achieve this end. As I have advised the parties, it is not my role to question or advise the Public Body regarding the optimal method for determining support. It is my role to look at the method already chosen, the DSP Screening Tool, and determine whether it complies with Part II of the *FOIPP Act*.

As subsection 31(c) sets out, only that personal information which is necessary for the DSP may be collected by the Public Body. “Necessary” is not defined in the *FOIPP Act*, but is defined in the Oxford English Reference Dictionary as follows:

necessary, adj. 1 requiring to be done, achieved, etc.; requisite, essential ...

Therefore, in order to satisfy subsection 31(c) of the *FOIPP Act*, the Public Body must show that the personal information it collects from clients of the DSP is *essential* to achieve the purposes of the DSP. A public body should ask itself whether each individual item of personal information collected is *required* to operate the program and whether it relates directly to the program. If it is not, then the personal information should not be collected.

The Complainant submits that of the 60 questions contained in the DSP Screening Tool, only the 18 questions under the section "Function" are used by the DSP case worker to determine the disability and the level of disability (the "Function Questions"). The percentage score for these Function Questions is calculated and entered on the first page

of the DSP Screening Tool as "Summary Findings". The Complainant submits that the other 42 questions are unnecessary and not related (the "Non-Function Questions"). Despite this reality, the Complainant points out that these Non-Function Questions request highly personal information that does not form the basis of support provided by the DSP.

The Complainant states that the only part of the DSP that the DSP case worker is permitted to act on are the Function Questions. Further, the Complainant points out that the disabled client is never told that the Non-Function Questions are irrelevant and not used to calculate assistance. Besides being an invasion of the client's personal privacy, the Complainant believes that the process is very confusing to the client with the disability.

The Public Body disagrees. It submits that each question on the DSP Screening Tool has the same unique purpose: to determine the severity of the disability and the appropriate unmet needs associated with the disability. This information leads to DSP payment for unmet disability-related needs. This information also measures client safety/exposure to risk, a key indicator of support/assistance required. The Public Body also states that the repetition among the questions enhances the reliability of the information collected.

As noted earlier, at my request, the Public Body examined the questions on the DSP Screening Tool and set out the purpose and authority for each. I outlined the cited authorities above. On the issue of purpose, in each case the Public Body describes the purpose as follows:

To determine the severity of the disability, the appropriate unmet needs associated with the disability, and link DSP payment for unmet disability related needs.

Further, the Public Body provided specific examples regarding the necessity of particular questions on the DSP Screening Tool. A sample follows:

Examples: What year is it (#1), what day of the week is it (#4), what country are we in (#7) .

Information collected through client response to these 10 questions helps the interviewer to determine a client's cognitive ability and capacity to process information, recall information and communicate information. A client's ability to answer these questions will establish how capable they may be to provide valid information for the remainder of the screening tool. A client who is unable to answer these questions may be at greater risk, vulnerable if unattended in the community. These clients may require a greater level of supervision or assistance.

Examples: Indicate how frequently you exhibit behavior that is self abusive (#17); Indicate how frequently you exhibit behavior that is withdrawn or turned inward (#18).

Information collected through client responses to these questions are indicators of safety. A client with these safety risk factors may require higher levels of supervision/assistance.

Examples: Indicate how frequently you are sexually inappropriate (#15); Indicate how frequently you exhibit sadness, tearful, weeping (#20).

Information collected through client response to these questions indicate a client's understanding of what may be socially acceptable and are helpful to determine the level of support/assistance necessary for the client. A client who acts out in a socially unacceptable manner may be at risk, or place the public at risk and may require greater one-to-one support.

Example: Indicate how frequently you exhibit poor sleep (#16).

The interviewer learns from information provided to this question if the client sleeps significantly more, or less than 8 hours per day. A client who sleeps more may require less support than the client who sleeps less.

Examples: Indicate your level of contact with your family (#57); your participation in a community activity (#59).

Information collected in this set of questions is used to indicate the clients current support system and unmet needs. The role of DSP is not to replace existing supports but rather to support unmet needs that specifically relate to the client's disability.

Addressing the issue of necessity, the Complainant raises two interesting points, as follows:

- (i) Why does the DSP ask 9 personal information questions of daily living when they provide no living allowance? and
- (ii) Why does the DSP ask 10 personal information questions about behavioural/psychosocial behaviour when they exclude mental illness?

The Complainant also points out that statistics show that more than 90% of Canadians with disabilities have physical disabilities which have nothing to do with the Non-Function Questions on the DSP Screening Tool (Supports and Services for Adults and Children aged 5-14 with Disabilities in Canada: An analysis of data on needs and gaps, commissioned by Federal-Provincial- Territorial Ministers Responsible for Social Services, December 3, 2004). While this may be so, I have been unable to find this conclusion in the report cited by the Complainant.

The Complainant addressed the issue of whether the collection of his personal information “relates directly to” the DSP. He submitted the following table to demonstrate his argument regarding the lack of relationship between the provision of services of the DSP and the collection of his personal information:

Question Category	Service Provided by DSP	Service Funded by DSP	Determinant of Funding
Memory	No	No	No
Behavior/ Psychosocial	No	No	No
Function	No	No	Yes
Instructional activities of daily living	No	No	No
Nutrition	No	No	No
Safety	No	No	No
Community Integration	No	No	No

The Public Body did not address the above table in its reply.

As further support of his argument that the DSP Screening Tool does not relate to this specific program and is not necessary for its operation, the Complainant provides some background information. The Complainant provides uncontradicted evidence that the DSP Screening Tool was purchased from a US firm, where it had been used to determine whether or not the interviewee should remain institutionalized. The US firm has statistical data on the form's relevance to that particular task. However, the Complainant believes those goals are contrary to the stated goal of the DSP, to "help people with qualifying disabilities be as independent as possible" and to "attain a satisfactory quality of life."

The Complainant adds that three of the Behavioral/Psychosocial questions on the DSP Screening Tool have criminal implications and should require the case worker to provide a legal warning to the client of his right to refrain from answering any question which is self incriminating. These questions are:

- (i) (Are you) verbally abusive?;
- (ii) (Are you) physically abusive?; and
- (iii) (Are you) sexually inappropriate?.

While it is not within my mandate to address this self-incrimination risk, I do note that such questions aim to collect information which is very private in nature, and the necessity requirement of subsection 31(c) is particularly appropriate when analyzing these questions.

The Use of the DSP Screening Tool

The Complainant points out that representatives of the Public Body have described the Non-Function Questions on the DSP Screening Tool as “optional” for the DSP case worker to ask of clients. In particular, the Complainant provides evidence that early in 2007, the Coordinator of the DSP testified before the Human Rights Commission, stating that the DSP case workers are instructed to ask the Function Questions on the DSP Screening Tool. If, and only if, the person with the disability scores below 30 on the mental function, the case worker would then ask questions from Section 2, "Behavior/Psychosocial". According to the testimony, all other personal information questions on the DSP Screening Tool are optional and generally not asked. The Complainant’s own experience (over four years with different case workers) has been that the case workers ask all of the questions on the DSP Screening Tool, despite the fact that the Complainant is considered high-functioning. The completed and scored DSP Screening Tools of the Complainant reflect these facts.

The Complainant argues the following in his submissions:

If the 42 personal information questions are not important, optional, they are ipso facto not ‘information relates directly to and is necessary for an operating /program or activity of the public body’. Therefore the personal information questions, apart from the 18 Function personal information questions, are in violation of FOIP as they collect personal information not required. This is an admission the personal information questions violate the FOIP”.

In response to the Public Body's submissions, the Complainant states that based on statements made by the head of the Public Body and his employees outside of this complaint, the submissions of the Public Body in this complaint are not consistent. Specifically, he points out that statements have been made that the DSP Screening Tool is not appropriate and is in the process of being revised or replaced. Further, contradictory statements were made about how the DSP Screening Tool is applied.

The Complainant argues as follows:

It is disingenuous to argue that each and every question is required to operate the program before the Acting Information and Privacy Commissioner and then make contradictory statements in the Legislature, the Guardian, and in sworn testimony at other Provincial bodies like the Human Rights Commission.

The Complainant states that the Public Body has provided only anecdotal information regarding its use of the Non-Function Questions in the DSP Screening Tool. Pointing out inconsistencies in the Public Body's submissions, the Complainant states the following regarding the information collected by the Non-Function Questions:

Their response is they use the information if the person "may require higher levels of supervision/assistance." The Public Body does not perform these services of supervision/assistance: those services are related to institutional care. The paradox is that if you are institutionalized you will not qualify for DSP. The Public Body does not have as its mandate to act as a screening agency for institutionalization. Why does it really need this personal information, curiosity or it just happens to be on the screening tool it purchased?

I find the evidence regarding the actual use by the Public Body of the DSP Screening Tool to be compelling in this investigation. However, I will consider several other factors before drawing my conclusions in this matter.

Is the collection of any personal information via the DSP Screening Tool necessary?

In one respect, the Complainant also questions the usefulness of all of the questions asked by the DSP Screening Tool.

It is the Complainant's submission that the order of the questions and the number of questions, as well as their nature and intrusiveness, can result in false, positive responses by the client with the disability. By way of explanation, the Complainant points out that a source of great fear of a person with a disability is potential loss of freedom through institutionalization. He states that the process of acquiring, dealing with and recovering from a disabling disease or event usually involves a period of institutional care. A disability often means activities of daily living are more difficult. The fear of institutionalization is expressed in the question, "Will I be able to look after myself?".

In the Complainant's view, when the 60 questions are posed by the DSP worker, the client can hear the words "competent" or "incompetent" in their mind. The Complainant argues that the disabled client easily recognizes that putting on one's best appearance is the appropriate response. The client provides answers which imply they have the skills to remain living independently. This is the "false positive" referred to by the Complainant. I note that representatives of the Public Body confirmed that, on the whole, clients overestimate, rather than underestimate, their functional abilities.

The Complainant argues that this bent towards false positives leads to a reduction in DSP support. He states as follows:

When the applicant gets to the "Function" section, the applicant has been psychologically set up to please the DSP worker with false positive responses. Who wants to admit they can't control their bladder, dress themselves, express themselves, solve problems, control their bowels, comprehend people, get along with others or remember things? However, false positives to these 18 questions mean the elimination or reduction in DSP support.

I empathize with the Complainant's comments regarding the potential leading nature of the questions on the DSP Screening Tool. Once again, it is beyond my mandate to make recommendations regarding the optimal method of determining disability-related funding. The Complainant himself concedes that the Function Questions are not contrary to Part II of the *FOIPP Act*, given the purpose of the DSP. Likewise, I find that the collection of some personal information is necessary for the operation of the DSP.

Overall Findings

In its final submission, the Public Body discloses that the DSP Screening Tool is no longer being used. Its retirement is for reasons other than privacy concerns. As the future of the DSP Screening Tool is uncertain, both parties remain interested in the findings given from this complaint.

I have considered thoroughly all of the submissions of the parties. I have concluded, based on the evidence presented to me, that the Non-Function Questions on the DSP Screening Tool are not a necessary collection of DSP clients' personal information, contrary to section 31(c) of the *FOIPP Act*. In reaching this conclusion, I have relied, in part, on the evidence that the Non-Function Questions are applied inconsistently by the case workers who administer the DSP Screening Tool, and are considered optional.

I agree with the Complainant that contradictory statements have been made regarding how the DSP Screening Tool has been applied. I do not believe such statements were made in bad faith. Rather, I find that they arise out of the reality that the DSP Screening Tool is not applied in a consistent manner. I suspect that if I asked five case workers at random how they use the DSP Screening Tool, I would receive five very different responses.

The Public Body has argued that the responses to each question on the DSP Screening Tool lead to the DSP payment for unmet disability-related needs. It is at this point that I have found that the Public Body's argument breaks down. On the face of it, all of the questions on the DSP Screening Tool appear to be logically related to a determination of severity of disability (indeed, I made such a finding in Investigation Report PP-06-004). However, I disagree with the Public Body's statement that all of the information gathered leads to the payment for unmet needs. Based on the evidence provided, in particular the actual DSP Screening Tool results of the Complainant, I conclude that it is only the responses to the Function Questions which lead to DSP payment. Because the DSP is a program whose main activity is to determine and provide financial support to disabled clients, this fact is determinative. Contrary to section 31(c), it shows lack of a direct relationship between the Non-Function Questions and the operation of the DSP.

I have considered the Public Body's submission that the initial questions on the DSP Screening Tool establish how capable the DSP client may be to provide valid information for the remainder of the tool. While this may be the author's original purpose for these questions, the evidence indicates that the DSP does not actually use the responses to these questions for that purpose.

The Public Body has stated that the Non-Function Questions are also necessary to ensure the reliability of the questions asked. While I appreciate the importance of the accuracy of a measurement tool, I place no weight on this evidence for two reasons. First of all, by the Public Body's own admission, it sometimes refrains from asking the Non-Function Questions on the DSP Screening Tool, and considers them "optional" in some cases. Secondly, if there is a reliability component built into the DSP Screening Tool, I find that the Public Body does not make use of it, as the score it implements is a simple sum of responses to the Function Questions.

I think it is appropriate to point out to the head of the Public Body that there are certainly reasons *not* to collect personal information. For example, a public body should not collect a client's personal information to "save for a rainy day" in case a program is expanded and the information turns out to be useful at that time. It is equally erroneous to fall into the trap of collecting personal information simply because it is "on the form". These practices do not comply with subsection 31(c) of the *FOIPP Act*. The personal information collected must be essential information required by the program. It is simple logic that if a public body is not actually using the information it collects, then it is not required by the program.

The Public Body was given the opportunity to prove that the DSP Screening Tool complies with Part II of the *FOIPP Act* and, in particular, to respond fully to the allegations of the Complainant. Despite such invitation, I find that the Public Body has not proven that the DSP Screening Tool complies with any subsection of section 31 of the *FOIPP Act*.

Does the Public Body collect personal information from participants of the DSP, via the DSP Screening Tool, in contravention of any other subsection of Part II of the *FOIPP Act*?

Subsection 32(2) of the *FOIPP Act* states as follows:

32. (2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about shall inform the individual of
- (a) the purpose for which the information is collected;
 - (b) the specific legal authority for the collection; and
 - (c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

While carrying out a previous investigation on the DSP, when asked whether staff are trained to provide explanations or respond to questions relating to the collection of personal information, the Public Body advised that a *FOIPP Act* advisory appears on all hard copy DSP forms that collect information. I have been provided with a copy of the advisory.

The Public Body also advised that printed posters and desk-size tent cards containing a privacy advisory have been distributed to all staff throughout the DSP. In addition, employees and managers within the DSP have received training on the *FOIPP Act* so that they are able to address questions regarding the collection of clients' personal information.

The DSP Screening Tool contains such an advisory. Based on the foregoing, it appears that subsection 32(2) of the *FOIPP Act* has been satisfied. However, given the evidence of the parties regarding the potential bias in the responses to the questions in the DSP Screening Tool, I recommend a verbal explanation by the case worker to their responding client. A thorough explanation has the potential of not only setting clients' minds at ease, but also clarifying the true purpose of the questions and establishing trust.

V. ORDER / RECOMMENDATIONS

Pursuant to the conclusions set out above, I find that:

1. The use by the Public Body of the Non-Function Questions in the DSP Screening Tool violates Part II of the *Freedom of Information and Protection of Privacy Act*, in particular, subsection 31(c); and
2. The Public Body complies with the technical requirements of subsection 32(2) of the *Freedom of Information and Protection of Privacy Act*.

The head of the Public Body has advised that it will no longer be using the DSP Screening Tool. Therefore, no order will result from my findings, as no order is necessary.

In the event that the head of the Public Body decides to implement a new screening tool to replace the former, I recommend that:

1. The tool undergo a comprehensive Privacy Impact Assessment prior to such implementation;
2. The head of the Public Body use this order as a guide to ensuring that a similar violation of the *Freedom of Information and Protection of Privacy Act* does not occur in the future; and
3. The head of the Public Body arrange to provide a verbal explanation to DSP clients regarding the specific purpose of the DSP Screening Tool questions.

I thank the Public Body and the Complainant for providing me with comprehensive submissions during my investigation. I was particularly impressed with the quality of the Complainant's submissions, as a layperson initially unfamiliar with the *Freedom of Information and Protection of Privacy Act*. I also thank the head of the Public Body for their cooperation and stated readiness to follow my recommendations.

Karen A. Rose
Acting Information & Privacy Commissioner