



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

INVESTIGATION REPORT

INVESTIGATION I93-004M

A Municipal City

July 28, 1993



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Municipal City (the City).

The complainant is a member of the City's Fire Department. A Professional Fire Fighters' Association (the Association) is representing the interests of the complainant for purposes of this investigation.

At a fire scene in December 1992, statements were made by certain fire fighters regarding possible staff reductions in the fire department. A member of the public at the fire scene registered a complaint with a City councillor regarding these statements saying they were unprofessional and unethical. As a result of this incident, the Mayor of the City appointed the City Auditor to investigate the matter along with the Deputy Fire Chief. A preliminary investigation report (the report) was produced which identified the complainant as one of the fire fighters who had made some of the statements in question. The City stated that this report was stamped "confidential". No additional fire fighters were identified.

The press obtained the information in the report and contacted the complainant for a statement. The press subsequently printed information from the report in a newspaper article.

The Association has submitted that the City disclosed the report, containing the complainant's personal information, contrary to section 32 of the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information" as defined in section 2(1) of Act?
- (B) Was the disclosure to the press in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information" as defined in section 2(1) of Act?

Section 2(1) states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was a five page report written by the City Auditor containing the results of the investigation of the complaint to the City councillor. It identified the complainant as having made certain statements to the tenants at the fire scene. It also gave details of the interview conducted by the City Auditor with the complainant.

In our view, the report contained information which met the requirements in paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the disclosure in accordance with section 32 of the Act?

The City has informed us that it cannot determine who gave the information and/or the report to the press. The City has advised that once the investigation was completed, the report in question was delivered to the Fire Chief's Office on December 31, 1992. This copy was filed in a locked drawer where only the Deputy Chief had access. The report was also sent to the Chief Administrative Officer of the City (CAO), on December 31, 1992. On January 4, 1993, the report was sent to the Mayor of the City and each member of Council. The City informed us that the report was also sent to the Association and on January 4 or 5, 1993, a copy was given to the individual who filed the complaint initially. The Association informed us that it received the report on January 11, 1993. The City Auditor, who wrote the report, filed his copy in the CAO/Audit Records Office where only Audit staff and the records clerk had access.

According to the City, therefore, the City Auditor, the Deputy Fire Chief, the Fire Chief, the CAO, the Mayor, all members of the City Council, the Association, and the individual who filed the initial complaint with the City councillor, all had copies of the report prior to the date of the newspaper article, which was January 5, 1993.

We requested that the City contact each of the above identified individuals, excluding the individual who filed the initial complaint, to inquire whether they had disclosed the confidential report or the information in the report to any other individual, including the press. The City informed us that all of the individuals completed and signed forms which indicated that they had not disclosed the report or its contents to any other individual.

We contacted the individual who filed the initial complaint with the City councillor to determine whether she had provided a copy of the report to the press. She informed us that she was out of the province until January 4, 1993. She went back to work on January 5, 1993, and, at that time, saw a copy of the report and the newspaper article. She did not have a copy of the report before the newspaper article was printed on January 5, 1993.

Since none of the individuals who were identified as having access to the report, acknowledged disclosing the report or the information it contained to the press, we were unable to determine

who disclosed the personal information. Therefore, we were unable to establish conclusively if the City made the disclosure.

We have, however, examined the provisions of section 32 of the Act which permits disclosure in specific circumstances. It is our view that if the City had disclosed the personal information to the press, the disclosure would not have been in accordance with section 32 of the Act.

Conclusion: We were unable to determine who disclosed the personal information. However, if the City had disclosed the personal information, the disclosure would not have been in accordance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- We were unable to determine who disclosed the personal information. However, if the City had disclosed the personal information, the disclosure would not have been in accordance with section 32 of the Act.

RECOMMENDATIONS

In our draft report we stated that although we were unable to determine if the City disclosed the personal information to the press, we would nevertheless like to make the following recommendation.

The City should take steps to ensure that with respect to investigations of this nature, it is clearly communicated to those who have access to the investigative report that it remain confidential, and that any disclosure of personal information should be made in accordance with the provisions of the Act. This advice should be reflected in the City's procedures for conducting such investigations.

In reply to this recommendation, the City advised that:

1. The City Auditor has initiated guidelines to his staff on the procedures to be followed in the handling of future internal investigation reports. These include:

Reports should only contain personal information where absolutely necessary.

When a report does contain personal information, its circulation should be as restricted as possible; and such circulation should be approved specifically by the City Auditor or the Director of Audit Services.

Each report should have on its cover page a statement that it does contain personal information and that the disclosure of such information is governed by the Act.

Each page of the report which contains personal information should incorporate a similar advisory/cautionary statement.

Personal information collected in the course of audits or investigations, whether incorporated in reports or not, must be collected, handled and stored with full confidentiality and in accordance with the requirements of the Act.

2. Each investigative report will have on its cover page a statement that it does contain personal information and that the disclosure of such information is governed by the Act.
3. When the Commissioner's final report is received, a memo will be issued to all Departments and Council advising them of the Commissioner's report and recommendation. Guidelines similar to those developed for the City Auditor's Department will be incorporated into the City's Municipal Freedom of Information and Protection of Privacy Guidelines and Procedure Manual.
4. Departments will be reminded of previous communication sent to them with suggested wording to be used to advise members of Council when they are being provided with information with potential exemptions under the Act.
5. The City Auditor has made a clear indication of willingness to comply with the recommendation in the Commissioner's report and avoid inappropriate disclosure in the future.

We have carefully considered the City's submissions and are satisfied with its comprehensive response to our recommendation.

Original signed by: _____
Susan Anthistle
Compliance Review Officer

July 28, 1993

Date