



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

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# **INVESTIGATION REPORT**

## **INVESTIGATION I93-008M**

### **A Municipal City**

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**October 26, 1993**



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## INTRODUCTION

### Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named municipal city (the City).

The complaint was that the City had failed to provide proper notice for the collection of personal information on its License Renewal Application (the Application), as it pertained to taxicab drivers and owners, contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act). The complainant was also concerned that the City was collecting financial and criminal record information about taxi drivers and owners without the proper legal authority to do so.

The complainant was specifically concerned with questions one, two and three on the Application. These questions were related to bankruptcy proceedings, outstanding judgements, and criminal convictions.

### Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information requested in the Application "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Did the City have the authority to collect the personal information, in accordance with section 28(2) of the Act?
- (C) Did the City provide notice of its collection, in accordance with section 29(2) of the Act?

## RESULTS OF THE INVESTIGATION

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

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, **criminal** or employment history of the individual or information relating to **financial** transactions in which the individual has been involved, (emphasis added)

The complainant provided us with a copy of the Application. It contained questions about criminal and financial matters relating to the applicant.

It is our view that the information requested in the Application met the requirements of paragraph (b) of the definition of "personal information" in section 2(1) of the Act.

**Conclusion:** The information requested in the Application was personal information, as defined in section 2(1) of the Act.

**Issue B: Did the City have the authority to collect the personal information, in accordance with section 28(2) of the Act?**

Section 28(2) of the Act states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity.** (emphasis added).

We have examined the City's collection of criminal record and financial information separately, below.

### **Criminal Record Information**

The City referred us to Bylaw 142-89, the Public Vehicle Licensing By-law, section 18(3), which states:

#### Grounds for Refusal to Issue or to Renew a License

18. An applicant is entitled to be licensed and a licensee is entitled to have his licence renewed except where:
  - (3) the issuance of the licence or renewal of the license would be contrary to the public interest;

The City stated that the legal authority for the above provision is found in the Municipal Act, RSO 1990, c.M.45, s.232 as it relates to the regulation of the owners and drivers of cabs and other vehicles used for hire. Section 232 of the Municipal Act states in part that:

By-laws may be passed by the councils of towns, villages and townships and by police services boards of cities:

1. For licensing, regulating and governing ... owners and drivers of cabs ...

The City also pointed to section 109 of the Municipal Act as providing the general authority to municipalities for the power to licence:

- (1) The power to license any trade, calling, business or occupation or the person carrying on or engaged in it includes the power to prohibit the carrying on of or the engaging in it without a licence.

(2) The power to license, regulate or govern places or things includes a power to license, regulate or govern the trades, callings or business for which such places or things are used and the persons carrying on or engaged in them.

Having reviewed By-law 142-89 and the relevant sections of the Municipal Act, it is our view that the licensing of taxicab owners and drivers was a "lawfully authorized activity".

In regard to the Application's question concerning criminal convictions, however, the complainant felt that the City should not have requested information about convictions for which a pardon had been granted.

As well, while the complainant agreed that the City had an obligation to ensure that the public was under no threat from a taxicab owner or driver, he felt that only specific criminal convictions should be collected, e.g. crimes of violence, and that the City's request for information concerning **all** criminal convictions elicited confidential information at the expense of new applicants and licensees.

In response to the complainant's concern regarding pardoned convictions, the City revised its Application to read "Since you were last licensed by this licensing section, have you been convicted under any law of any country, province, or state thereof, of any criminal offence or any other offence **for which a pardon has not been granted?**" (emphasis added). The City sent us a copy of the revised form, and advised us that it is now in general use.

However, the revised form did not address the complainant's concern regarding the City's collection of information on **all** criminal convictions (with the exception of those for which a pardon had been granted). In support of its stance that applicants should disclose details of all criminal convictions for which a pardon had not been granted, the City contended that, under the provisions noted above, it is authorised to regulate licences based on past conduct of applicants "as a measure of reasonable grounds for the belief that an applicant will carry on the licensed activity in accordance with the law and with integrity and honesty."

The City also argued that section 18(3) of By-law 142-89 provides that a license not be issued if such issuance or renewal would be contrary to the public interest. The City indicated that collection of only specific criminal offenses, such as crimes of violence, might not provide sufficient information to determine whether the public interest is best served through the issuance or renewal of a particular license. The City further stated that while not all criminal convictions would be a deterrent to the issuance of a license, it is important that the City be aware of the past conduct of an applicant who desires to perform an important public service function in the community.

Having reviewed By-law 142-89, the relevant sections of the Municipal Act and the above submissions, it is our view that the City needs to collect information about an applicant's convictions for all criminal offenses for which a pardon has not been given, in order to fulfil its role in protecting the public interest. It is thus our view that the City had the authority to collect information relating to criminal convictions, from both taxicab owners and drivers, as it was necessary to the proper administration of taxicab licensing.

**Conclusion:** The City's collection of criminal record information from taxicab owners and drivers was in accordance with section 28(2) of the Act.

### **Financial Information**

The City contended that collection of the financial information was "necessary to the proper administration of a lawfully authorized activity".

The City stated that Bylaw 142-89 contains the relevant section for the collection of financial information necessary for the purpose of regulating licenses. Section 18(1), in particular, states:

#### Grounds for Refusal to Issue or to Renew a Licence

18. An applicant is entitled to be licensed and a licensee is entitled to have his licence renewed except where:
  - (1) having regard to his financial position, the applicant or licensee cannot reasonably be expected to be financially responsible **in the conduct of the business which is to be licensed or is licensed;** (emphasis added)

As previously mentioned, based on By-law 142-89 and sections 109 and 232 of the Municipal Act, it is our view that the licensing of taxicab owners and drivers was a "lawfully authorized activity".

The complainant asserted, however, that the collection of financial information was not "necessary" to the proper administration of this activity. He stated that the financial information requested in the Application was irrelevant to the renewal of an owner's or driver's licence, and that the City's by-law gave the City unlimited discretion to collect whatever financial information it deemed necessary for the purpose of regulating licensees.

The complainant also felt that other personal information (undefined) collected in the Application should satisfy the need for effective licensing administration.

To determine whether the City's collection of this financial information was "necessary" to the licensing of taxicab owners and drivers, we asked the City the following questions:

1. Why is financial responsibility relevant **in practice** to the licensing of drivers and owners?
2. What problems would the City or public experience as a consequence of drivers or owners being or becoming insolvent?
3. How many licenses are refused as a consequence of collecting information on the financial status of the applicant?

The City responded that they are aware of only a few problems (not specified) with drivers and owners experiencing financial problems. The City believed that this success could be attributed to the fact that the applicant is asked about his/her financial well-being at the time of the application.

The City further stated that financial responsibility is relevant to the licensing of drivers, as they are required to satisfy their payments to the owner of the taxicab and brokerage. In our view this item may be important for the owner, but is not necessarily a concern of the City.

The City advised us that in the case of owners, the information is vital because the licence being issued has a monetary value on the open market. The City stressed that even though licenses may be transferred between parties or owners, the licences are considered the property of the City. However, the complainant stated that it was his view that agreements of purchase and sale are strictly private matters.

The City reiterated since it retains the ownership of the license at all times, it is the ultimate "owner". The City stated that because it is cognizant of its responsibility to the travelling public and to the taxicab industry, it has a keen interest in the financial status of the licensee.

We understand that the concern of the City is that, if a licensee gets into financial difficulties, this may disrupt the provision to the public of the taxi service which has been licensed. The City gave a specific example of a case where, because the holder of a taxicab owner's licence was bankrupted, the licence plate was not used for 2 1/2 years.

The complainant contended that the example cited by the City was misleading, and that the licence was in fact actively operated through a lease agreement with a long-standing member of the industry during much of the period in question. The City's rebuttal was that during the entire investigation and court deliberation period, the plate was in the possession of the City's License Manager.

### **Leasing of Licenses**

We have determined that the leasing of licenses is not uncommon.

Section 61(2) of the by-law states:

- (2) A licensed owner shall file with the licensing section all documents required to report any change, including, if applicable, a lease or sub-lease agreement or similar documentation relating to ownership or vehicle operation ...

Therefore, the by-law specifically contemplates leases, which must be filed with the City.

It seems likely that, in at least some cases, when the City talks about licensing drivers, those drivers may include people who drive taxicabs, but who are also lessees of the taxi licence.

One of the implications of drivers also being lessees is that, as a taxi licence has been held to be personal property, the lease of such a licence may also be personal property. If the lessee gets into financial difficulties, the effect on the provision of the taxi service to the public could be much the same as where the owner has financial difficulties (depending on the terms of the lease agreement).

In our view, the questions on the Application concerning bankruptcy status and judgement debts are more relevant to taxicab licence owners, who conduct the business of providing a taxicab service, than to taxicab drivers (at least where the driver is not also a lessee of the owner's licence). The City advised us that of 1,487 licensed drivers, 696 drivers (46%) are lessees, partners, or owner/drivers. As such, these 696 individuals are lessees, with an interest in taxicab plates.

The complainant challenged the City's figures. He stated that there are only 472 taxicabs licensed by the City, and that the number of owners is considerably less than 472, since many control more than one licence. In response, the City stated that there is a distinction between plates and licences issued, and that while the number of taxi plates is 472, the actual number of licensed drivers, including owners, lessees and sub-lessees, is 1,487.

Whatever the actual number may be, in the case of drivers, who are also lessees of licences, and owners, we accept the City's argument that for these individuals conducting a business, and holding a property interest in taxicab plates, financial responsibility is an important consideration when renewing or granting licences. Therefore, we consider the collection of such basic financial information as bankruptcy status and outstanding judgements to be **necessary** to the proper administration of taxicab licensing.

However, non-lessee drivers are not conducting a "business which is to be licensed or is licensed" by the City. It is thus our view that collection of the financial information from non-lessee drivers was not necessary to the proper administration of taxicab licensing.

**Conclusion:** The City's collection of financial information from drivers, who are also lessees of licences, and owners was in accordance with section 28(2) of the Act.

The City's collection of financial information from non-lessee drivers was not in accordance with section 28(2) of the Act.

**Issue C: Did the City provide notice of its collection, in accordance with section 29(2) of the Act?**

Section 29(2) of the Act states:

If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;

- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

The City acknowledged that proper notice was not provided on the Application. However, in response to this complaint, the City revised its application form. It now contains a statement which complies with section 29(2) of the Act.

**Conclusion:** The City did not provide notice of its collection, in contravention of section 29(2) of the Act.

## SUMMARY OF CONCLUSIONS

- The information requested in the Application was personal information, as defined in section 2(1) of the Act.
- The City's collection of criminal record information from taxicab owners and drivers was in accordance with section 28(2) of the Act.
- The City's collection of financial information from drivers, who are also lessees of licences, and owners was in accordance with section 28(2) of the Act.
- The City's collection of financial information from non-lessee drivers was not in accordance with section 28(2) of the Act.
- The City did not provide notice of its collection, in contravention of section 29(2) of the Act.

## RECOMMENDATION

We acknowledge that the City has since provided proper notice on its Application.

We recommend that the City discontinue the collection of financial information, i.e. the two questions concerning bankruptcy status and outstanding judgements, from non-lessee drivers. To achieve this, the City may wish to revise its Application, such that only drivers, who are also lessees of licences, and owners are instructed to complete questions one and two.

Within six months of receiving this report, the City should provide the Office of the Information and Privacy Commissioner/Ontario with proof of compliance with the above recommendation.



Original signed by: \_\_\_\_\_  
Susan Anthistle  
Compliance Review Officer

October 26, 1993  
\_\_\_\_\_ Date