



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

INVESTIGATION REPORT

INVESTIGATION I93-031M

A TOWNSHIP



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named Township (the Township).

An individual complained that the Township had disclosed his personal information contrary to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, (the Act). The complainant stated that he had filed a complaint with the Ontario Provincial Police (the police) concerning certain members of the Township's Council who had threatened him with violence at a council meeting. The police had then conducted an investigation but no charges were laid. According to the complainant, the Township had then obtained a copy of the police's General Occurrence Report dated April 30, 1993 (the report) and was selling the report to the public at twenty five cents a copy.

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 the Act? If yes,
- (B) Was the disclosure of the personal information 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 the Act?

Section 2(1) of the Act 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; (emphasis added)

We have reviewed a copy of the report. The report contained the complainant's name together with other personal information about him, including specific statements attributed to him.

In its reply to our draft report, the Township submitted that the description of any actions or statements attributed to the complainant did not constitute "personal information" since "any and all actions described in the Incident Report arose out of a public Council meeting..."

In our view, the fact that the actions described in the report took place in an open council meeting was not relevant to the determination that the statements attributed to the complainant constituted his personal information. We remain of the view that the information contained in the report satisfied the requirements of 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 of the "personal information" in accordance with section 32 of the Act?

Under the Act, an institution shall not disclose personal information in its custody or under its control except in the specific circumstances outlined in section 32.

The Township stated that it had relied on section 32(e) of the Act for the disclosure of the report. Section 32(e) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;

The Township had requested the report from the police. When the report was received by the Township, it was made the subject of a motion at a regular meeting of Council, on June 17, 1993. It was the Township's position that the report became a Township record once it was received as correspondence.

The Township stated that under section 73 of the Municipal Act, one of the Clerk's duties is to keep records of the Council and that section 74(1) of the Municipal Act provides that:

Any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 73 and the minutes and proceedings of any committee of the council, whether the acts of the committee have been adopted or not, and other documents in possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the

clerk's hand and the seal of the corporation of the municipality, to any applicant on payment at such rate as the council may by by-law establish.

It is also the Township's position that at no time did it sell copies of the report but rather, it charged the usual photocopying fee for records requested by members of the public. Therefore, according to the Township, it was permitted to disclose the report under section 74 of the Municipal Act and to provide a copy of it for a twenty five cents fee.

We have ascertained that section 74(1) of the Municipal Act was amended in 1992 to read at the beginning "Subject to the Municipal Freedom of Information and Protection of Privacy Act." Therefore, the Township was required to determine if any provisions of section 32 applied before disclosing records containing personal information under section 74(1) of the Municipal Act. We have determined that the Township did not do so in this case. It is our view that the Township's disclosure of the report was, therefore, not in accordance with section 74(1) of the Municipal Act and was, thus, not in accordance with section 32(e) of the Act.

In its submissions to our draft report, the Township stated that section 32(c) of the Act also applied to the disclosure of the complainant's personal information. This section states that:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

The Township stated that it had obtained the report in order to determine the status of the police investigation and to complete the Township's records with respect to this matter. In our view, the Township's subsequent disclosure of the complainant's personal information contained in the report to the public was not for the purpose for which the personal information had been obtained or compiled.

Under Section 32(c), personal information can also be disclosed for a "consistent purpose". Section 33 of the Act further provides that:

The purpose of a use or a disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure.

However, in this case where the personal information had been collected **indirectly** from the complainant, a consistent purpose would be one that was "reasonably compatible" with the purpose for which the personal information had been obtained. In our view, the Township's disclosure of the complainant's personal information to the public cannot be said to have been for a purpose that was reasonably compatible with the purpose for which the personal information had been collected. In our view, the Township's disclosure was not for a consistent purpose and was, therefore, not in accordance with section 32(c) of the Act.

We have examined the other provisions of section 32 and have determined that none applied to the Township's disclosure of the report containing the complainant's personal information.

Conclusion: The Township's disclosure of the complainant's personal information was not in accordance with section 32 of the Act.

OTHER MATTERS

In its submissions on our draft report, the Township also stated that it was its view that section 27 of the Act was applicable. This section states that:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

In our view, the police created the report containing the complainant's personal information as part of its investigative process. The Township then obtained the report in order to ascertain the status of the investigation and to complete its records. It is our view that it cannot be said that the Township had obtained and was maintaining the complainant's personal information specifically for the purpose of creating a record to be made available to the public. In our view, Section 27 did not apply to the complainant's personal information.

The Township also submitted that the disclosure of the report was in accordance with sections 14(1)(c), 14(2)(a) and 16 of the Act. These sections of the Act apply to the release of personal information in response to a freedom of information access request made under Part I of the Act. In this case, the disclosure of the complainant's personal information was not in the context of an access request under the Act to the Township for the complainant's personal information. In our view, therefore, sections 14(1)(c), 14(2)(a) and 16 of the Act did not apply.

Conclusion: Sections 14(1)(c), 14(2)(a), 16 and 27 of the Act did not apply.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- The Township's disclosure of the complainant's personal information was not in accordance with section 32 of the Act.
- Sections 14(1)(c), 14(2)(a), 16 and 27 of the Act did not apply.

RECOMMENDATION

The Township should establish written procedures to ensure that records which contain personal information are disclosed only in accordance with the Act.

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

Original signed by: _____
Susan Anthistle
Compliance Review Officer

December 31, 1993
Date