



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

INVESTIGATION REPORT

INVESTIGATION I94-079M

A Municipality

June 19, 1995



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a Municipality. The complainant's and the Municipality's accounts of the circumstances leading up to this complaint, however, differed significantly. While these differences have been noted below, the Municipality nonetheless acknowledged that it did disclose certain of the complainant's personal information.

The Municipality stated that one of its Building Inspectors had notified the complainant that he was illegally using a property he owned as a four-family dwelling, contrary to the zoning by-law.

The Municipality added that sometime later, the complainant telephoned the Area Manager of the Municipality's Building and Inspections Department (the Department) and asked him to defer the issuance of an Order to Comply against his property, further to the infraction, because he was considering running for Councillor in the 1994 municipal election, and the issuing of the Order might jeopardize his chances. The complainant, however, denied that he (a) telephoned the Area Manager, (b) requested a deferral of the work order, and (c) indicated that he was planning to run in the election.

The Municipality stated that the complainant's request to defer the Order was discussed with various officials of the Department, and with the Councillor for that ward (the Councillor). The Municipality added that the Area Manager and two Building Inspectors subsequently attended the property, and advised the complainant that the Department could not withhold the issuance of the Order. The complainant stated that a discussion regarding the Municipality's inability to defer the Order never took place.

The Municipality stated that sometime later, the Councillor telephoned the Area Manager and requested further information about the complainant's property. The Councillor was advised that an active zoning file was being compiled against this property because, although it was zoned as residential, a business was being operated from it; that an Order was being issued to the owner (i.e., the complainant) listing infractions of the housing by-law; and that a second zoning file was being started for the illegal use of this property as a four-family dwelling.

The complainant stated that the Councillor, who was running for re-election, used the information that the Department had disclosed to him in his campaign literature, as follows: "The male candidate running against (the named Councillor) in this election contributes to the problems in our neighbourhood. He has an illegal four family income property which is in disrepair and does not meet the property standards by-law under the building and inspection guidelines."

The complainant stated that the Municipality's disclosure of this information to the Councillor contravened 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 the Act? If yes,
- (B) Was the personal information disclosed to the Councillor, in compliance 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 where 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 the information disclosed by the Municipality to the Councillor, in connection with the complainant's property. This included "... **all details** of the request for deferral, including who made the request, and the ownership details of the property" (emphasis added). "All details" would include that the complainant had allegedly requested that the order for non-compliance with the by-law be delayed because of his upcoming candidacy.

The information in question also included:

- that a zoning file was being compiled against the complainant's property because it was a residential building and a business was being operated from it,
- that an Order was in the process of being issued to the complainant listing infractions of the Municipality's housing by-law,
- that a second zoning file was being started for the illegal use of the property as a four-family dwelling, and
- the fact that the complainant had been identified as being responsible for the alleged unlawful condition of the property.

The Municipality took the position that "... the information that was provided respecting the infractions against the property and outlining the municipal address of the property, does not constitute personal information, but rather property information ..." The Municipality cited a number of Orders issued by this Office in support of its position, including Orders M-15 and M-176.

The records at issue in M-15 were copies of work orders which had been issued by a municipality against various residential rental properties. Commissioner Tom Wright concluded that "... the municipal addresses of the properties in question as well as information concerning repairs do not constitute personal information as defined in the Act."

In M-176, Inquiry Officer Holly Big Canoe stated: "I find that the fact of being identified as responsible for the alleged unlawful condition of a property is 'other personal information' for the purposes of subparagraph (h) of the definition ..."

Based on the above, we concur with the Municipality that the municipal address of the complainant's property and the infractions against it did not constitute "personal information", as defined in section 2(1) of the Act.

However, it is also our view that the complainant's name together with the fact that he owned the property in question, that he had allegedly requested that the order for non-compliance with the zoning by-law be delayed because of his upcoming candidacy, and that he was identified as being responsible for the alleged unlawful condition of the property met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The municipal address of the complainant's property and the infractions against it did not constitute "personal information", as defined in section 2(1) of the Act.

The complainant's name together with the fact that he owned the property in question, that he had allegedly requested that the order for non-compliance with the zoning by-law be delayed because of his upcoming candidacy, and that he was identified as being responsible for the alleged unlawful condition of the property was "personal information", as defined in section 2(1) of the Act.

Issue B: Was the personal information disclosed to the Councillor, in compliance with section 32 of the Act?

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 32.

The Municipality submitted that section 32(c) of the Act permitted the disclosure of the complainant's personal information to the Councillor. Section 32(c) states: "An institution shall not disclose personal information in its custody or under its control except ... for the purpose for which it was obtained or compiled or for a consistent purpose."

Section 33 of the Act further states that:

The purpose of a use or 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.

The Municipality explained that the issue of multiple unit dwellings was a controversial matter in the area of the complainant's property. It added that the property in question was a multiple unit dwelling, and that the request for a delay related to the complainant's non-compliance with the provisions of the zoning by-law that dealt with multiple unit dwellings.

The Municipality submitted that the complainant's name was provided to the Councillor "... in order that the Councillor could participate fully in discussions respecting the unusual request for a deferral of a Work Order on a property in his Ward." The Municipality further submitted that it advises the ward councillor "of any special consideration either being granted or requested in respect of a property in his or her Ward, in order that the Ward Councillor can properly deal with any enquiries he or she may receive respecting the request under consideration."

The Municipality also stated that it is the practice of the Buildings and Inspections Department to share information concerning building or zoning infractions with the respective ward councillor, where, in the judgement of the Area Manager, special circumstances exist or "where it anticipates problems." The Municipality stated that, in this case, the special circumstances were the complainant's "forceful demand" that the order for non-compliance be delayed because of his upcoming candidacy. According to the Municipality's Area Manager, the complainant stated: "Don't you dare issue an order against my property."

The Municipality added that staff of the Department "were concerned that the complainant would also approach the ward councillor, and the staff wished to ensure that the Councillor was aware of the potentially controversial situation and the Department's decision as well as its rationale, in the event that he received enquiries."

The Municipality stated that the Department notified the Councillor "to make him aware of the Department's approach and to ensure consistency in enforcement. The Department is aware that many property owners approach their Councillors for assistance, and therefore consistency in enforcement was of concern to the Department."

In summary, therefore, the Municipality's position is that it disclosed the complainant's personal information because the complainant had requested special consideration with respect to his property (i.e., a delay in issuing an order to comply due to his upcoming candidacy), and the Councillor needed this information to assist him in dealing with any enquiries he received regarding the complainant's request. The Municipality was also concerned that since many property owners approached their Councillor for assistance -- presumably to favourably influence their request for special consideration -- consistency in enforcement of the by-law was of concern to the Department.

In our view, the Municipality would have obtained or compiled the fact that the complainant had allegedly requested the Department to delay issuing an order to comply against his property, in order to decide whether or not to grant the request, for the ultimate purpose of administering its zoning by-law.

In order for the Municipality's disclosure of the complainant's personal information to be in compliance with section 32(c) of the Act, the information must have been disclosed either to assist the Municipality in deciding whether or not to grant the complainant's request, or for a purpose that was consistent with deciding whether or not to grant the complainant's request. And, since the Municipality collected this information directly from the complainant, a consistent purpose is one which the complainant would need to have reasonably expected.

The Municipality has not provided us with any information demonstrating that the Councillor played a role in deciding whether or not to grant a property owner's request to delay the issuance of an order to comply. Thus, it is our view that the Municipality's disclosure of the complainant's personal information to assist the Councillor in dealing with any enquiries he received regarding the complainant's request was not for the purpose for which it had obtained this information.

The Municipality contended that, in requesting the deferral, "the complainant should reasonably expect that all details of such an unusual request would be discussed with officials within the Department of Buildings and Inspections and with the Ward Councillor."

We concur with the Municipality in that the complainant could have reasonably expected that the details of his request would have been discussed with officials of the Department, as those very officials were the employees of the Municipality responsible for either granting or denying the complainant's request. However, we do not concur with the Municipality that the complainant should have reasonably expected that the details of his request would be discussed with the Councillor.

With regard to the complainant's reasonable expectation of this disclosure, the complainant stated: "I am deeply disappointed that the alleged request was being used as a poor excuse to leverage the rationale to further discuss the matter with anyone; including (the named Councillor)."

Based on all of the above, it is our view that the Municipality's disclosure of the complainant's personal information to the Councillor was not in compliance with section 32(c) of the Act. We also reviewed the remaining provisions of section 32, and found that none applied.

Conclusion: The Municipality's disclosure of the complainant's personal information to the Councillor was not in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The municipal address of the complainant's property and the infractions against it did not constitute "personal information", as defined in section 2(1) of the Act.

The complainant's name together with the fact that he owned the property in question, that he had allegedly requested that the order for non-compliance with the zoning by-law be delayed because of his upcoming candidacy, and that he was identified as being

responsible for the alleged unlawful condition of the property was "personal information", as defined in section 2(1) of the Act.

- The Municipality's disclosure of the complainant's personal information to the Councillor was not in compliance with section 32 of the Act.

RECOMMENDATIONS

We recommend that the Municipality take steps to ensure that personal information is disclosed only in accordance with section 32 of the Act.

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

Original signed by:
Ann Cavoukian, Ph.D.
Assistant Commissioner

June 19, 1995
Date
