



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

INVESTIGATION REPORT

INVESTIGATION MC-980044-1

A Municipal Police Service

July 8, 1999

INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a municipal police service (the Police).

The complainant was a member of a local Girl Guide organization. In a conversation at a Girl Guide gathering, the complainant was overheard by another Girl Guide member to make certain comments about the Police. The Girl Guide member who overheard these comments passed this information on to a Police Officer who was also a friend. The Police Officer in turn advised the Chief of Police of the information provided to her about the complainant's comments. The Police decided to look into the matter further. The Police obtained a statement from the Girl Guide member who overheard the complainant's comments, and subsequently contacted a local group leader of the Girl Guide organization. The Chief of Police also provided details of the situation to the Police Services Board. The Police Chief wrote to the Girl Guide Division Commissioner, advising her of what had been reported to him, and requesting that the Girl Guide organization take appropriate action.

The complainant is concerned that the Police have collected her personal information contrary to section 28(2) of the Municipal Freedom of Information and Protection of Privacy Act (the Act). Her complaint relates specifically to collection by the Police Officer of comments she made to the Girl Guide member, and the collection of her personal information from the same Girl Guide member during the Police investigation. The complainant also objects to the fact that the Police collected this personal information indirectly, contrary to section 29(1) of the Act, and that the Police did not take reasonable steps to ensure that the personal information was accurate before it was used, as required by section 30(2) of the Act. Finally, the complainant maintains that the Police used and disclosed her personal information contrary to sections 31 and 32 of the Act, when details of her conversation with the other Girl Guide member were brought to the attention of the Police Services Board by the Chief of Police, and when the Police contacted officials of the Girl Guide organization.

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 Police's collection of the complainant's personal information in compliance with section 28(2) of the Act?
- (C) Was the Police's indirect collection of the complainant's personal information in compliance with section 29(1) of the Act?

- (D) Did the Police take reasonable steps to ensure that the complainant's personal information when used was accurate and up-to-date, in compliance with section 30(2) of the Act?
- (E) Was the personal information used by the Police in compliance with section 31 of the Act?
- (F) Was the disclosure of the complainant's personal information by the Police to the Police Services Board and the Girl Guide organization 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 defines “personal information” as recorded information about an identifiable individual, including,

- (e) the personal opinions or views of the individual except if they relate to another individual.

The Police maintain that the information in question is not “personal information”. In the view of the Police, the comments made by the complainant relate to one or more members of the Police Service, and therefore fall within the excepted portion of paragraph (e). The Police maintain that because of the circumstances under which the complainant made her comments, and given that the complainant is very public in her opinions and views, her comments cannot properly be characterized as “personal” for the purposes of the Act.

I do not accept the position put forward by the Police. The comments made by the complainant to the other Girl Guide member related to the Police as an organization, and were not specifically about any identifiable Police officer or official. In my view, the information consists of the “personal opinions or views” of the complainant about the Police Service, which qualifies as her personal information under section 2(1) of the Act. It should also be noted that Adjudicator Laurel Copley made the same finding in Order M-1132 which involved the same parties and similar issues.

Conclusion: The information in question is the personal information of the complainant, as defined by section 2(1) of the Act.

Issue B: Was the Police's collection of the complainant's personal information in compliance with section 28(2) of the Act?

Two collections of the complainant's personal information were made by the Police. First, when the Police Officer collected the complainant's personal information from the Girl Guide member who overheard the complainant's comments; and second, when the Police subsequently obtained the Girl Guide member's statement respecting the comments during the course of its investigation.

Section 28(2) of the Act sets out the circumstances under which personal information may be collected on behalf of an institution. This section 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.

The Police maintain that if I find that the information is "personal information", then the collection is justifiable because the Police investigation relates to "law enforcement" as defined in section 2(1) of the Act.

The definition of law enforcement reads as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in these proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The complainant maintains that her personal information collected by the Police was not used by the Police for the purposes of law enforcement. She refers to Order M-1132 where Adjudicator Cropley stated:

The Police indicate that, pursuant to Section 41 of the Police Services Act, the duties of the Chief include ensuring that members of the Police carry out their duties and that discipline is maintained in the force. The Police stated that they looked into the matter [the complainant's comments] with the intent of stopping this kind of conduct from happening in front of young children. The Police do not claim that this investigation falls within their law enforcement mandate. Rather, their interest in this matter stems from a concern regarding their public image and the impact that such comments have on their relationship with the youth in their community.

In the present matter, the Police state that Adjudicator Cropley's finding "does bring the issue within the context of law enforcement. Concern over the public perception, especially by the community's youth, falls within the mandate of 'policing'."

The Police also state that the investigation of the complainant's comments could result in proceedings in a court or tribunal, wherein a penalty or sanction could be imposed. Specifically, the Police point out that if it is determined that the source or basis of the comments was the complainant's spouse, who is a member of the Police Service, he may be subject to discipline under the Police Services Act (the PSA).

The Police also state:

It is the position of the [Police] that the investigation of [the complainant's] comments was not only authorized by law, but in fact mandated by law. [The complainant's] comments can be seen as nothing less than a complaint about the conduct of one or more police officers, as well as the policies or services of the police force. Accordingly, the Chief of Police has an obligation under the *Police Services Act* to investigate this complaint.

The specific sections of the PSA relied on by the Police are sections 41, 56(1), 61(1) and 64.

Section 41 of the PSA sets out the duties of a chief of police, which include:

- (a) in the case of a municipal police force, administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the board under subsection 31(1);
- (b) ensuring that members of the police force carry out their duties in accordance with this Act and the regulations and in a manner that reflects the needs of the community, and that discipline is maintained in the police force;
- (c) ensuring that the police force provides community-oriented police services;
- (d) administering the complaints system in accordance with Part V.

Part V, referred to in section 41(d), includes section 56(1). This section states:

Any member of the public may make a complaint under this Part about the policies of or services provided by a police force or about the conduct of a police officer.

Section 61(1) of the PSA provides:

Subject to subsections 59(3), (4) and (5), the chief of police shall review every complaint that is made about the policies of or services provided by a municipal police force and shall take any action, or no action, in response to the complaint as he or she considers appropriate.

Section 64 of the PSA addresses complaints about a police officer's conduct, and specifically states:

Subject to subsections 59(3), (4) and (5), the chief of police shall cause every complaint made about the conduct of a police officer, other than the chief of police or deputy chief of police, to be investigated and the investigation to be reported on in a written report.

Section 59(3), (4) and (5) are not relevant in the present circumstances.

Has the definition of "law enforcement" been established?

(a) policing

There is no question that "policing" is at the core of the law enforcement mandate of all Police Services. However, it does not necessarily follow that all actions taken by the Police constitute policing activities. In my view, the actions taken by the Police in collecting the complainant's personal information from the Girl Guide member who overheard the complainant's comments, and the subsequent use made of this personal information by the Police, do not constitute policing activities. As stated earlier, the comments, as reported to the Police, are general in nature, and reflect the complainant's lack of confidence in the operation of the Police force in her community. I can appreciate that these views may not sit well with the Police and, like any other organization which is responsive to public opinion, the Police may decide to respond in a manner deemed appropriate to the circumstances. However, in my view, the response taken by the Police in collecting and subsequently using the complainant's personal information in these particular circumstances is not a policing activity.

It is also relevant to note that in Order M-1132, which dealt with records relating to the same incident, the Police did not rely on their law enforcement mandate as the basis for denying access. The matter was dealt with under the personal information provisions of the Act, and the law enforcement presumption available under this exemption claim (section 14(3)(b)) was not relied on by the Police.

Therefore, I find that part (a) of the definition of "law enforcement" has not been established.

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in these proceedings

It is also my view that the Police have not accurately characterized the incident leading to the investigation of the complainant's comments.

First, it is clear that the complainant did not make a “complaint” for the purposes of Part V of the PSA. The complainant’s comments were made to another Girl Guide member, not to the Police. In making these comments she neither sought an investigation into policies of or services provided by the Police, nor could she reasonably have expected that such an investigation would result from her comments.

Second, in my view, the Girl Guide member who overheard the comments was also not making a “complaint” for the purposes of the PSA. The Girl Guide member expressed concern to a Police Officer, who was a friend, about the nature of the comments. In a subsequent statement collected by the Police from the Girl Guide member, she explains that the nature of her concern was that derogatory comments about the Police had been made in front of children, but at no point does she indicate an interest in making a formal complaint or provide any indication that she expects action to be taken in response to her conversation.

As far as the Police’s reference to the complainant’s spouse is concerned, nothing has been provided by the Police to suggest that the complainant’s spouse was in any way connected to the comments. In addition, based on information provided by the Police in this matter, I am not persuaded that the general nature of the comments themselves could reasonably be expected to lead to disciplinary proceedings under the PSA in any event.

Therefore, I find that part (b) of the definition of “law enforcement” has also not been established.

(c) the conduct of proceedings referred to in clause (b)

Part (c) of the definition of “law enforcement” is clearly not relevant in the circumstances of this matter.

Accordingly, I find that the collection of the complainant’s personal information by the Police was not “used for the purposes of law enforcement”.

None of the other exceptions in section 28(2) have been raised by the Police, nor are they applicable in the circumstances.

Therefore, I find that the collection of the complainant’s personal information was not in compliance with section 28(2) of the Act.

Conclusion: The Police's collection of the complainant's personal information was not in compliance with section 28(2) of the Act.

Issue C: Was the Police’s indirect collection of the complainant’s personal information in compliance with section 29(1) of the Act?

Under the Act, personal information shall only be collected by an institution directly from the individual to whom the information relates unless one of the exemptions in section 29(1) of the Act applies.

The Police collected the complainant's personal information from the Girl Guide member who overheard the complainant's comments and, subsequently, when a written statement was obtained from the Girl Guide member by the Police. The Police did not contact the complainant in the course of collecting her personal information, and she clearly did not consent to this collection. The complainant was in fact unaware that the collection had taken place or that she had become the subject of a subsequent investigation. There would appear to be no dispute that the personal information in question was not collected directly from the complainant.

Section 29(1)(g) states that an institution shall collect personal information only directly from the individual to whom the information relates unless,

- (g) the information is collected for the purpose of law enforcement.

In Issue B, I found that the collection of the complainant's personal information was not used for the purposes of law enforcement. Because the personal information was not collected for the purpose of law enforcement, section 29(1)(g) of the Act does not apply. No other provisions of section 29(1) are applicable in the circumstances. Therefore, I find that the Police's indirect collection of the complainant's personal information was not in accordance with section 29(1) of the Act.

Conclusion: The indirect collection of the complainant's personal information was not in compliance with section 29(1) of the Act.

Because of my findings under Issues B and C, it is not necessary for me to consider Issue D.

Remaining Issues

Issue E: Was the personal information used by the Police in compliance with section 31 of the Act?

Issue F: Was the disclosure of the complainant's personal information by the Police to the Police Services Board and the Girl Guides organization in compliance with section 32 of the Act?

Sections 31 and 32 of the Act prohibit the use and disclosure of personal information, subject to listed exceptions. The only exceptions with potential application in the circumstances of this matter are sections 31(b) and 32(c), which read as follows:

31. An institution shall not use personal information in its custody or under its control except,
 - (b) for the purpose for which it was obtained or compiled or for a consistent purpose
32. 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 “purpose for which it was obtained or compiled” and “consistent purpose” as they are used in these two sections, both imply that the personal information was originally collected for a purpose and in a manner permitted under section 28(2) and 29(1) of the Act. Because the Police did not comply with the provisions of sections 28(2) and 29(1) in collecting the complainant’s personal information, it necessarily follows that any subsequent use or disclosure of this same information could not be in compliance with the sections 31(b) and/or 32(c) of the Act.

Therefore, I find that any use and/or disclosure of the complainant’s personal information by the Police was not in compliance with sections 31(b) and/or 32(c) of the Act.

Conclusions: Any use and/or disclosure of the complainant’s personal information was not in compliance with sections 31(b) and/or 32(c) of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined by section 2(1) of the Act.
- The Police's collection of the complainant's personal information was not in compliance with section 28(2) of the Act.
- The indirect collection of the complainant's personal information was not in compliance with section 29(1) of the Act.
- Any use and/or disclosure of the complainant’s personal information was not in compliance with sections 31(b) and/or 32(c) of the Act.

RECOMMENDATIONS

I recommend that the Police take steps to ensure that all staff are aware that personal information may be collected only if the collection is in compliance with section 28 and 29 of the Act.

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

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ July 8, 1999
