



Information and Privacy
Commissioner/Ontario

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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-030044-1

Toronto Community Housing Corporation



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PRIVACY COMPLAINT NO. **MC-030044-1**

MEDIATOR: **Giselle Basanta**

INSTITUTION: **Toronto Community Housing Corporation**

SUMMARY OF COMPLAINT:

The Information and Privacy Commissioner/Ontario (the IPC) received a complaint from a resident of 10 Humberline Drive Toronto, Ontario regarding the collection of personal information from vehicle and ownership records. The complainant stated that around the end of August 2003, the Toronto Community Housing Corporation (the TCHC) sent a notice to all tenants stating that copies of current vehicle insurance and ownership papers (vehicle information) had to be submitted for the purpose of issuing parking permit stickers.

It is the complainant's position that the TCHC is not entitled to collect and use this type of vehicle information, as the information is not required to achieve the purposes presented to residents, by the TCHC, at a subsequent meeting on October 1, 2003.

DISCUSSION:

The following issues were identified as arising from the investigation:

Is the information "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;

In a memorandum dated December 8, 2003 from the Community Housing Manager to all tenants at 10 Humberline Drive, the documentation required by the TCHC in order to obtain a parking sticker consists of:

1. Current insurance certificate for the vehicle to be registered/parked (this should show the effective date of coverage, name of the insured tenant and license plate number); and;
2. Current ownership of vehicle (this should show the owner of the vehicle (i.e. name of the tenant) and license plate number; if the vehicle belongs to a parent, then a letter from the parent authorizing use of the vehicle is required).

As such, the information contained in the records that the TCHC is collecting includes the name and address of the owner of the vehicle, the year, make, model of the vehicle, the insurance policy number and effective dates, the driver's license number of the vehicle owner, and the license plate number of the vehicle.

In my opinion this information falls within the definition of personal information as defined in section 2(1) of the *Act*.

Was the collection of the "personal information" in accordance with section 28 of the *Act*?

Under the *Act*, an institution cannot collect personal information except in compliance with section 28(2) of the *Act* which 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]

Complainant's submissions

The complainant submits that upon first moving into the building, tenants simply informed the landlord of the make, model and licence plate number of their vehicle(s). This practice continued until toward the end of August 2003 when the TCHC sent a notice to all tenants stating that copies of current vehicle insurance and ownership papers had to be submitted for the purpose of issuing parking stickers.

The complainant attended a meeting between the tenants and TCHC staff. The Community Housing Unit Manager stated that there were three reasons for the new policy requiring tenants to submit vehicle ownership and insurance information: break-ins; vandalism; and illegally parked vehicles.

The complainant believes that the information at issue is not required to achieve the purposes stated to tenants by the Community Housing Unit Manager at the meeting. The complainant does not believe that the TCHC is entitled to such information pursuant to her lease with the TCHC and that the TCHC's demand for the vehicle ownership and insurance information is an unnecessary invasion of privacy. Further, the complainant submits that the TCHC has not provided any guidelines with respect to this new policy of collecting the information at issue for the purpose of administering the parking program other than what is stated in the notice(s) including (but not limited to):

- advising what ownership means;
- the updating of the information;
- the safeguarding of the information.

In a subsequent letter from counsel for the complainant to this Office, counsel submits, in part:

...

The residents of 10 Humberline acknowledge that a program to control vandalism, unauthorized parking is a lawfully authorized activity. In fact, the residents welcome such a program. However, the collection information with respect to the ownership and insurance of vehicles is not necessary to administer such a program. In fact, there is no rational connection between the collection of such information and the stated goals of the program. (sic)

...

TCHC's submissions

The TCHC is an amalgam of 2 companies, the Toronto Housing Company (THC) and the Metro Toronto Housing Corporation (MTHC). In October 2001, these two entities merged and created the TCHC. The TCHC Board of Directors accepted and ratified policies from the legacy companies, including a parking program from the former MTHC in December 2001.

According to the TCHC, the Humberline property was in the portfolio of the former THC and tenants were required to pay monthly for the privilege of parking their vehicle in a parking spot designated by the TCHC.

The TCHC states that there were abuses of the parking system by residents and non-residents alike such as theft, vandalism, illegal parking and sales transactions occurring in the garage. The TCHC says that staff frequently encountered non-residents entering the parking garage, thus compromising building security and gaining access to residential areas. According to the TCHC, some residents were letting out parking spots to students of nearby Humber College, at highly inflated prices, and students were entering the parking garage and parking in residents' spaces without permission. Further, individuals were vandalizing the card entry system thereby causing costly repairs. It is on this basis that TCHC staff concluded that in order to ensure greater safety

and security for tenants and their guests, “a more stringent approach to parking management was required.”

The TCHC submits that tenants were notified of the changes to the parking program that would become effective October 1, 2003 in September 2003 via posters on each floor, the lobby, the laundry facilities and in the parking garage. In addition, letters were sent directly to tenants asking them to provide a copy of their current vehicle insurance and ownership to TCHC staff. According to the TCHC, once the information was registered, parking tags were issued to the residents to place on their cars. It should be noted that tenants were also informed on the notices that any vehicles without updated tags would be towed at the owner’s expense.

With respect to its authority to collect the personal information at issue, the TCHC states that it is designated a local housing corporation under the *Social Housing Reform Act* (the *SHRA*). The TCHC is the owner of the property at 10 Humberline and it maintains that, as the landlord, it should be able to collect valid vehicle ownership and up to date vehicle insurance information in order to properly regulate who parks on the property and who has access to the parking facilities. The TCHC also cites the *Toronto Municipal Code, 915-2 (B)* which provides:

No person shall park or leave a motor vehicle on private property without the consent of the property owner or occupant.

Again, the TCHC makes the point that as the owner of the property, it should be able to regulate who parks on the property, and who has access to the parking facilities. This is the reason that TCHC staff at Humberline now collects personal information through the valid vehicle registration and up to date vehicle insurance. The TCHC states section 7(12) in the tenants’ leases, for both Rent Geared to Income and Market, sets out the contractual conditions under which permission to park is granted for a fee, provided that parking is available at the building. As tenants must sign a lease to live in a TCHC building, they have consented to TCHC’s right to set conditions and terms for the privilege of parking on TCHC facilities.

According to the TCHC, the collection of this personal information allows the TCHC to ensure that tenants who are legitimately able to park in the building have places to park and a safe environment to park in. Further, the TCHC states that this also permits the TCHC to identify and tow illegally parked vehicles for the purpose of supporting a safe and secure parking environment for tenants and their vehicles.

Specifically with respect to the collection of insurance information, the TCHC advises that it is concerned that vehicles being parked on TCHC property have valid plate and insurance “for liability issues.” The TCHC says that it cannot properly address the safety of tenants’ and TCHC property when non-roadworthy vehicles are permitted to remain in TCHC garages should something unfortunate occur. The TCHC points out that it requires tenants to purchase an insurance policy for the contents of their units. It argues that it should be allowed to require the same level of assurance for vehicles that would be occupying TCHC property.

I agree with the TCHC that, as the landlord and owner of the property at 10 Humberline Drive, the administration of the parking program at that building is a lawfully authorized activity.

However, I also agree with (then Assistant) Commissioner Ann Cavoukian's comments in IPC Investigation Report I94-085P that the TCHC must also demonstrate that the collection of the personal information at issue in this case was **necessary** to the proper administration of this lawfully authorized activity.

The purpose of collecting personal information relating to the ownership of a vehicle is, as submitted by the TCHC, to address occurrences of theft, vandalism, illegal parking and other inappropriate activities on TCHC property both in the underground parking garage and the outdoor parking area. In this manner, the TCHC staff can rely on the personal information contained in the official vehicle ownership documentation that would verify the owner of the vehicle that was parked on the TCHC property or others who may have access to or reasons for being on the property. I therefore accept that this would serve to contribute to and enhance the overall safety and security of all the tenants.

Previously, tenants were only required to provide the make, model and licence plate number of the vehicle thereby operating on an "honour system", if you will, and that seemed to be sufficient for quite a long time. Prior to September 2003, the information collected by the TCHC linked a vehicle to a parking space on TCHC property, but did not necessarily link an individual to that vehicle. The TCHC submits that when the parking program was compromised by some individuals letting out parking spaces to non-residents, other individuals parking in tenants' parking spaces without their permission, and faced with the prospect of costly repairs to a vandalized card entry system, the TCHC decided that, "a more stringent approach to parking management was required."

I appreciate that some tenants at 10 Humberline who acted with integrity and good faith and complied with the old parking program may be upset that they must now adhere to the requirements of the more stringent new parking program. However, I accept that the collection of personal information related to vehicle ownership, including where the vehicle belongs to a parent and whether the individual identified via that record is a tenant or not, is necessary to the proper administration of the parking program, a lawfully authorized activity.

With respect to the personal information contained in a valid vehicle insurance certificate, the argument presented by the TCHC is, in my view, not as persuasive as with the collection of personal information relating to vehicle ownership. To quote from the TCHC's submissions on this subject:

Insurance and Liability Issues

As a landlord, TCHC has numerous concerns with insurance and liability issues for the tenants, and for the corporation as a whole. TCHC not only has a responsibility as a landlord to address the safety of its tenants throughout its premises, but also must address risk management issues in order to preserve the long-term building and community integrity of its premises such as 10 Humberline Drive.

Such responsibilities include TCHC as landlord regulating access to its property, and regulating the use of common areas and parking facilities. TCHC has valid concerns that vehicles being parked on TCHC property have valid plates and insurance for liability issues. TCHC cannot address the safety of tenants' and TCHC property when non-roadworthy vehicles are permitted to remain in TCHC garages, should something untoward and unfortunate occur.

The collection of information, such as registration, ownership and insurance particulars permit the TCHC to take appropriate action to ensure the security of its residential complex and address risk management and property damage in a timely and effective manner. In the lease, TCHC requires that tenants purchase an insurance policy for the contents of their units. Therefore, why would TCHC not require the same level of assurance for vehicles that would be occupying TCHC property?

I am not persuaded that the collection of tenants' personal information contained in a valid insurance certificate which would include the effective date of coverage, the name of the insured driver/tenant and license plate number of the vehicle is **necessary** to properly administer the parking program.

I understand and accept that the TCHC is responsible for regulating access to its property in the interest of the safety and security of all tenants. I also understand the concept of risk management as a general strategy to preserve long-term building and community integrity of the premises. However, the TCHC's reference to "liability issues" stating that "... TCHC cannot address the safety of tenants' and TCHC property when non-roadworthy vehicles are permitted to remain in TCHC garages, should something untoward and unfortunate occur" does not, in my view, establish that it is necessary for the TCHC to collect this personal information to properly administer the parking program. I conclude therefore that the collection of this personal information was not in compliance with section 28(2) of the *Act*.

Other Matters

Notice regarding the collection of personal information

During the course of this investigation, the question arose as to whether the tenants were given proper notice for the collection of personal information for the purpose of issuing parking stickers as required by section 29(2) of the *Act*.

Section 29(2) provides:

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. R.S.O. 1990, c. M.56, s. 29 (2).

The supporting materials provided to me by the complainant and the TCHC with respect to notifying the tenants at 10 Humberline that it was collecting personal information relating to vehicle ownership and valid vehicle insurance do not contain the legal authority for the collection or the title, business address and business telephone number of an officer or employee of TCHC who can answer the individual's questions about the collection. In my view, none of the documents complied fully with all of the notice provisions in section 29(2) of the *Act*. In a document submitted to this Office by the TCHC entitled "Toronto Community Housing Authority Parking Program" dated March 16, 2001 there is mention on page 7 but no evidence of, a registration card. Under the subheading **Registration**, it provides, in part, as follows:

All vehicles to be parked on TCHC property must be registered at the Property Management office using the provided registration card.

Tenants will be required to attend at the Property Management Office to provide a completed registration card, proof of vehicle ownership, proof of insurance and to obtain a new sticker and sign a waiver. Information on the insurance and ownership will be kept confidentially in the tenants file. ...

In my view, this registration card should be amended, if it is not already been done, to comply with all of the notice requirements of section 29(2) of the *Act*.

The Lease

Both the complainant and the TCHC have made reference to the lease between the parties in their respective roles as landlord and tenant. It is my view that the IPC can only interpret the privacy provisions of the *Act* and cannot rule on the validity of lease provisions governing issues of tenancy, including tenants' rights with respect to parking. These issues and/or disputes fall under the jurisdiction and authority of the Ontario Rental Housing Tribunal (the ORHT) and should be properly brought before the ORHT as I understand is the case here.

The Safeguarding of personal information

The complainant did raise a concern about the safeguarding of this type of personal information. I agree with the TCHC that unlike a private landlord, tenants are obliged by the *SHRA* to present information, including personal information to the TCHC on a yearly basis. In my opinion, it is reasonable to expect that because some tenants apply for subsidized housing, and arguably even for those applying for market rent accommodation, the TCHC collects more personal information than private landlords. Because they are subject to the *Act*, the TCHC is bound by

the access and privacy provisions therein with respect to all information contemplated by the *Act* in its custody or control. Further, its actions in this area are subject to oversight from this Office.

In its submissions the TCHC states:

TCHC has custody and control of this income information, allowing tenants access to their personal information through the MFIPPA process, and through a commitment to transparency and accountability. Tenants may not access the personal information of other tenants, nor will staff show these documents to anyone other than individuals with signed consent to release forms from the tenants in question. TCHC does not release the personal information of its tenants to any businesses, organizations, or government agencies other than those that might have a signed agreement with TCHC, or another housing providers (sic), as set out in the SHRA.

...

TCHC is committed to maintaining the privacy and security of the tenant's personal information. In order to ensure that the sensitive information collected is not misused or mishandled, staff does not disclose the information collected to other individuals, businesses, or government agencies without signed consent or written agreements with these groups. Tenants must also sign consent to release forms in conjunction with their yearly rent reviews, and when they become tenants, both Market and RGI, of TCHC. Tenant files are kept in a secure location in the CHU office, and are accessible only to the staff involved in the administration of the landlord-tenant relationship, and no others. Staff has been informed of MFIPPA guidelines, and instructed to contact the MFIPPA coordinator or the Legal Unit whenever access and privacy issues arise.

It is my opinion that there is no reasonable basis for me to conclude that the TCHC will not treat the personal information collected by way of vehicle ownership records in the same manner that it treats all the other information that it collects relating to tenants and TCHC community housing programs. However, the complainant retains the right to launch a privacy complaint if there is a specific concern or incident that requires investigation.

CONCLUSIONS:

I have reached the following conclusions based on the results of my investigations:

- The information at issue was personal information as defined in section 2(1) of the *Act*.
- The TCHC's collection of personal information from vehicle ownership records was in compliance with section 28(2) of the *Act*.

- The TCHC's collection of personal information via valid automobile insurance certificates was not *necessary* to the proper administration of a lawfully authorized activity, its parking program, and therefore not in compliance with section 28(2) of the *Act*.
- The notices that the TCHC provided with respect to the collection of the personal information at issue were not in compliance with all of the requirements of section 29(2) of the *Act*.

RECOMMENDATIONS:

1. I recommend that the TCHC cease the collection of personal information contained in certificates of valid automobile insurance with respect to persons seeking to register their vehicles with the TCHC for the purpose of obtaining a valid parking sticker and an assigned parking space at 10 Humberline Drive, Toronto.
2. I recommend that the TCHC ensure that any notices relating to the collection of personal information fulfill all of the requirements set out in section 29(2) of the *Act*.
3. I recommend that the TCHC amend its parking registration form or card to comply with all of the requirements of section 29(2) of the *Act*.
4. I recommend that the TCHC review comparable arrangements in place for other similar parts of its housing portfolio and assess the suitability of applying these recommendations to those other properties.

By **December 1, 2004** the institution should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Giselle Basanta
Mediator

September 1, 2004