



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-040019-1

The Corporation of the City of Oshawa



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PRIVACY COMPLAINT NO. **MC-040019-1**

INVESTIGATOR: **Brian Bisson**

INSTITUTION: **The Corporation of the City of Oshawa**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (the IPC) received a privacy complaint under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) involving the City of Oshawa (the City).

The complainant stated that the City had inappropriately disclosed his personal information on three separate occasions: (1) at a public meeting of the Oshawa Ice Advisory Council (OIAC) on November 12, 2003; (2) at a public meeting of the City's Operational Service Committee (OSC) on December 1, 2003, and (3) at a City council meeting on April 5, 2004. The complainant stated that the minutes of the City council meeting at which the disclosure took place, were available on the City's website.

BACKGROUND

The complainant and the City provided detailed background information related to recreational hockey programs within the City and the issues surrounding the complaint. I am including the following summary of this information as it would be useful in the context of the complaint.

Thousands of boys and girls are actively involved in hockey, figure skating, ringette and learn to skate classes in the City. The City does not deliver recreational programs nor does it administer or organize these activities, including minor hockey. The City does, however, allocate ice-time in City-owned arenas. Applications for ice-time in the form of rental contracts are submitted to the City's Department of Operational Services, which maintains the right to award or cancel any rental contract.

These activities are organized and administered through a number of voluntary organizations such as the Oshawa Ice Advisory Council (the OIAC). The OIAC consists of a number of volunteer organizations who work together to promote ice recreation and ensure a fair distribution of ice hours among the various applicants. These organizations include the Catholic Youth League, the Oshawa Church Hockey League, Oshawa Skating Club, Oshawa Minor Hockey Association and the Oshawa Central Council of Neighbourhood Association (OCCNA).

The OCCNA is a committee that was formed to co-ordinate sporting activities for neighbourhood sports associations and to act as an official voice for matters requiring representation with outside organizations including government organizations. The "hockey committee" is an official sub-committee of OCCNA and is known as the Neighbourhood Association Sports Committee-Hockey or NASC Hockey. The complainant stated that the subcommittee was an autonomous committee without a constitution, by-laws, procedures or any protection under the law.

The complainant was a parent/volunteer with OCCNA/NASC Hockey and operated a website for the hockey league on his own time and at his own expense. The complainant indicated and the City confirmed that it had a contract with OCCNA/NASC Hockey to provide ice time.

The complainant explained that in 2003, a group of parents and volunteers, including the complainant, become frustrated with OCCNA and the organization of NASC Hockey. This separate group of parents and volunteers took it upon themselves to legally incorporate NASC Hockey with the Ministry of Consumer and Business Services.

This created a situation where the City had two groups claiming access to the ice-time that had previously been granted to the former group, that is, OCCNA/NASC Hockey and NASC Hockey. The City decided that it would continue to deal with the former group, OCCNA/NASC Hockey. On November 11, 2003 OCCNA/NASC Hockey sent a letter to the City's Department of Operational Services stating that four named individuals, including the complainant, were no longer associated with the organization or any of its sub-committees (Letter #1). On November 17, 2003 OCCNA/NASC Hockey issued another letter to the same department advising that the complainant was no longer a member in good standing with the organization and requesting the City to remove the NASC Hockey link, (set-up and operated by the complainant) from its website until further notice (Letter #2).

On March 20, 2004, the complainant wrote to the Mayor, seeking assistance regarding the suspension from OCCNA/NASC Hockey (Letter #3).

THE DISCLOSURES:

The complainant stated that his personal information was disclosed on three separate occasions:

1. At a public meeting of the OIAC on November 12, 2003 when Letter #1 was read aloud.

2. At a public meeting of the Operational Service Committee on December 1, 2003 when Letters #1 and #2 were discussed and
3. At a city council meeting on April 5, 2004 when Letter #3 was discussed and the complainant's name entered on the agenda.

DISCUSSION:

The following issues were identified as arising from the investigation:

Issue A: Is the information in the three letters "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,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
...
- (d) the address, telephone number, fingerprints or blood type of the individual
- (e) the personal opinion or views of the individual except if they relate to another individual
- (f) the correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (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;

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in their professional, official or business capacity is not considered to be "about the individual." An individual's name, where it appears in his/her capacity as an official of an organization or company cannot qualify as that individual's personal information (P-1621, P-787).

Letter #1 is on the official letterhead of OCCNA, a voluntary organization made up of neighbourhood associations. In this letter, OCCNA advised the City that the individuals named in the letter, including the complainant, are no longer associated with the OCCNA or any of its sub-committees. In my view, the information in the letter consists of an official notice by a voluntary organization about the complainant's official standing within that organization. Therefore, I conclude that the information in Letter #1 does not qualify as the personal information of the complainant, as it is defined in section 2(1) of the *Act*.

In addition, the complainant claims that his personal information was disclosed when the letter was read out at a public meeting of the OIAC. As indicated previously, the OIAC is made up various volunteer organizations including Oshawa Church Hockey League, Oshawa Skating Club, Oshawa Old-timers and Oshawa Minor Hockey Association. Staff from the Department of Operational Services also attends meetings of the OIAC. One of the goals of the OIAC is "to act as an advisory body to the Operational Services Committee" and to work together to "create harmony and co-operation between the ice user groups in the City of Oshawa". Clearly, the OIAC is a volunteer organization and is not an "institution" subject to the *Act*. Therefore, even if I had concluded that Letter #1 did contain the appellant's personal information, because the OIAC is not an "institution" subject to the *Act*, I do not have the authority to deal with the matter.

Letter #2 is on official letterhead of the OCCNA and is also addressed to the City. It also consists of a formal notice to the City about the complainant's official standing within that organization. For the reasons iterated above, I conclude that the information in Letter #2 does not qualify as the personal information of the complainant.

Letter #3 is a letter from the complainant, addressed to the Mayor of the City requesting his assistance in resolving the issue. The letter contains the complainant's name, address and telephone number and contains the complainant's views about being removed from OCCNA. The letter also contains reference to a named individual. In my view, the letter contains information that relates to the complainant and the named individual and this information qualifies as their personal information under sections 2(1)(a), (d), (e) and (h) of the *Act*.

Issue B: Was the disclosure of the personal information in accordance with section 32 of the *Act*?

The complainant claims that his personal information contained in Letters #1, #2 and #3, was disclosed on three separate occasions.

The first and second disclosures involve Letters #1 and #2. I have already concluded above that the information in Letters 1 and 2 does not qualify as the appellant's personal information as defined under the *Act* and that the OIAC is not an institution under the *Act*. Therefore, I do not need to address the disclosures by the OIAC (the first disclosure) and the Operational Services Committee (the second disclosure).

I will now consider the disclosure of Letter #3 (the letter), the third disclosure.

The complainant submitted a letter addressed to the Mayor and marked it “WITHOUT PREJUDICE” and “CONFIDENTIAL”. In the letter, the complainant sought the Mayor’s assistance with respect to his lifetime suspension from the OCCNA.

The letter contained the following statement at the bottom:

This correspondence is privileged and confidential, and is intended for the use of the Mayor, Members of Council and any employee of the City of Oshawa *only to the extent required to facilitate a resolution to this matter*. The sender does not waive any related rights or obligations. Any distribution, use, or copying of this correspondence or the information it contains for other than an intended recipient or purpose is unauthorized. (emphasis added).

The complainant contends that his personal information was disclosed when his letter to the Mayor was discussed at an open council meeting and the minutes of the council meeting placed on the City’s website.

In response, the City stated that when the Mayor received the complainant’s letter, he considered it to be a matter that should be referred to City council. The City stated that the complainant’s letter was not considered a “personal matter about an identifiable individual” in accordance with section 239 of the *Municipal Act* as it involved matters concerning OCCNA and NASC Hockey. The City argued that it did not consider the information in the letter to be “personal information” as defined in section 2(1) of the *Act* and that even if it was personal information, disclosure did not constitute an unjustified invasion of personal privacy under sections 14(1), (2) and (3).

The City stated that the letter was placed on the agenda for the council meeting as that was considered to be the appropriate forum to address an issue that had been in the public arena for some time. Therefore it was for that purpose that the Mayor referred the letter to City council. A discussion of the letter was included in the agenda items for the council meeting on April 5, 2004.

The City stated that in accordance with section 239 of the *Municipal Act*, council meetings are open to the public and that council meetings are closed only in very limited circumstances.

Section 239(1) states:

- (1) Except as provided in this section, all meetings shall be open to the public.

Section 239(2) contains the following exception:

- (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

...

(b) personal matters about an identifiable individual, including municipal or local board employees;

...

The City's position is that the Mayor considered it a matter that involved an issue of public interest that had been the subject of ongoing public debate and should, therefore, be addressed by the council in an open meeting.

The City pointed out that it did attempt to address the complainant's concern. It modified the minutes of the council meeting for the meeting on April 5, 2004 by removing reference to OCCNA. The City subsequently also removed the minutes from its website.

As noted earlier, the City argued that the letter relates only to OCCNA and NASC and does not contain personal information. In the alternative, the City referred to sections 14(1), (2) and (3) of the *Act*, in support of its position that disclosure did not constitute an unjustified invasion of personal privacy. Earlier reports of the Commissioner have determined that the exemptions contained in sections under Part I of the *Act* are only applicable in the context of a request for access to personal information and I need not consider the City's submissions made under Part I.

Part II of the *Act* deals with the collection, retention, use and disclosure of personal information in the custody and control of an institution. The issue in this investigation surrounds the disclosure of personal information by the City under Part II of the *Act* and I will consider its application below.

Section 32 of the *Act* sets out a number of circumstances under which an institution may disclose personal information other than to the individual to whom the information relates. This section provides that an institution shall not disclose personal information in its custody or under its control, except in the circumstances listed in sections 32(a) through (l).

Section 32(c) of the *Act* provides as follows:

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;

Section 32(c) permits disclosure for the *original* purpose for which the information was collected or for a *consistent* purpose.

I have reviewed and carefully considered the complaint, the information provided by the complainant, the City's response and submissions.

In this case, the complainant wrote to the Mayor to seek his assistance to resolve his personal situation which centered on a dispute between two volunteer organizations and the decision by

one organization to determine its own membership. As noted above, the letter was marked “Confidential” and contained a caveat at the end that it was “intended for the use of the Mayor, Members of Council, and any employee of the City of Oshawa only to the extent required to facilitate a resolution of this matter”. The Mayor decided that this was a matter that had been the subject of prior discussions, and the issue was both of public interest and had been in the public arena.

In my view, it is not reasonable for a complainant to write to the Mayor, members of the council and employees for assistance in resolving his/her issue and expect the matter to be dealt with behind closed doors. This is even more so in the present case where the subject matter was very much in the public arena as evidenced by Letters #1 and #2.

In my view, the City disclosed the letter at the open council meeting for the same purpose that the complainant had intended – to resolve the issue that was the subject matter of the letter. I conclude that the disclosure of personal information was for the original purpose for which it was obtained or compiled i.e. to address the issue raised by the complainant, and was therefore in accordance with section 32(c) of the *Act*.

It is clear that the City has established a process in keeping with the principles of open government and transparency of decision-making in open meetings and I commend the City for this. It is also clear that when individuals write to the Mayor, their communication may, as in the present case, contain personal information which must only be disclosed in accordance with the requirements of section 32 of the *Act*. It is important to note that an individual, who writes to a City official and marks the letter “Confidential”, would expect it to be held in confidence. There is an onus, however, on a complainant to carefully consider what personal information he/she is willing to have disclosed, in order to have their issues addressed. Under the *Act*, an institution has an obligation to balance transparency against the disclosure of personal information. To prevent situations which may lead to complaints about disclosure of personal information, as in the present case, it may be beneficial for the City to ensure that every member of the public that files a complaint/document with the City or Mayor’s office is apprised of the process that will be followed.

CONCLUSION:

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

1. The information in Letters #1 and #2 does not qualify as personal information as defined in the *Act*.
2. The information in Letter #3 does qualify as personal information as defined in the *Act*.

3. The disclosure of the personal information was in accordance with section 32(c) of the *Act*.

July 26, 2005

Brian Bisson
Investigator