



Information and Privacy  
Commissioner/Ontario

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

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## PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-040027-1

Township of Atikokan

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# **PRIVACY COMPLAINT REPORT**

**PRIVACY COMPLAINT NO.**                      **MC-040027-1**

**INVESTIGATOR:**                                      **Frances Soloway**

**INSTITUTION:**                                      **Township of Atikokan**

## **INTRODUCTION:**

### **BACKGROUND AND SUMMARY OF COMPLAINT**

The Office of the Information and Privacy Commissioner/Ontario (the IPC) received a complaint from a resident of the Township of Atikokan (the Township) regarding the disclosure of his personal information by the Township. The complainant stated that a letter of complaint that he had written to the mayor was disclosed to the local newspaper and was discussed at an open council meeting.

By way of background, the complainant provided the following information. On June 29, 2004 he attended a local municipal council meeting to make a presentation on behalf of the local ratepayers association. After the presentation, he witnessed what he considered to be unprofessional behaviour by a council member, the Clerk-CAO, and the mayor. On June 30<sup>th</sup>, the complainant wrote a letter of complaint to the mayor (the letter), expressing his concerns. He copied the letter to the ratepayers association and the Township Personnel Committee. The letter was received by the Township on July 5, 2004.

On July 19, 2004, the day on which the complainant's letter was discussed at the open council meeting, the complainant's wife discovered that portions of the letter were quoted on the front page of the local newspaper. His wife went to the newspaper's office to inquire how they had obtained a copy of the letter and who had authorized them to print it. She discovered that a council member, who was one of the individuals referred to in the letter (the councillor), had informed an employee at the newspaper of the complainant's letter. The newspaper contacted the Township and requested a copy of the letter.

The complainant stated that on the day that his letter was discussed at an open council meeting, he was working out of town, was not aware that the letter was on the agenda for discussion and

therefore was not present at the meeting; however, some of his friends were present at the meeting. The complainant stated that at the council meeting, the councillor suggested that the complainant's letter stemmed from reasons unrelated to the subject of the complaint, but rather an employment-related issue between the Township and the complainant's wife.

The complainant expressed his concern that parts of his letter were printed and appeared without the proper context. The complainant objected to his letter being publicly discussed in his absence and without being given an opportunity to participate. The complainant further stated that he had not intended his letter to be presented and discussed in a public forum; he believed that it was a "personnel" matter and would be discussed in a closed meeting.

Subsequent to the council meeting and with the consent of the complainant, the newspaper printed the complete text of the letter with the complainant's name but without his address and telephone number.

The complainant provided a copy of the letter and the newspaper containing the article to this office.

## **RESULTS OF THE INVESTIGATION:**

In the course of investigating the complaint, I had several discussions with the complainant and the Township. Both parties had the opportunity to discuss their positions. With the consent of the complainant, a copy of his complaint and attachments were provided to the Township.

The Township provided me with information in response to the complaint, including a copy of its procedural by-law, relevant sections of the *Municipal Act* and a letter from the former Clerk/Treasurer, in support of the Township's position.

The letter is addressed to the mayor and contains the complainant's name, address and telephone number. The body of the letter contains the complainant's concerns about how the council meeting was conducted and in particular, his opinions regarding the behaviour of the councillor, the Clerk-CAO and the mayor.

## **DISCUSSION:**

The following issues were identified as arising from the investigation:

**Issue A: Is the information in the record "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,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) 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;

I have reviewed the information in the letter (the record). As I have indicated above, it contains the name, address and telephone number of the complainant and also contains the complainant's views about the individuals named in the record. I note however, that the address used by the complainant is a postal box number and not a residential address and does not qualify as personal information under section 2(1) of the *Act*. At the bottom, the letter shows a "Cc" to the Township Personnel Committee and the Atikokan Ratepayers Association.

I am satisfied however that the name and telephone number on the record qualifies as the personal information of the complainant in accordance with section 2(1)(h) above.

I will now address the text or body of the record. The complainant advised that he had written the letter to express his own personal views about the behaviour of certain individuals at the council meeting. He stated that it was his "own personal opinion and no one else's."

Personal information, as set out in section 2(1)(e) above includes the personal opinions or views of the individual **except** as they relate to another individual. I have reviewed the record and I agree with the complainant that it contains his opinions and views regarding the behavior and conduct of the individuals referred to therein and therefore, his opinions and views as they relate to these other individuals. Previous orders of this agency have concluded that an individual's recorded personal views or opinions about another individual constitute the personal information of the other individual only (see Orders M-114, M-132, and M-571). The record at issue in this complaint contains the complainant's views and opinions about other individuals. I agree with the reasoning and analysis in those orders and adopt it for the purposes of this investigation. Therefore, I conclude that the body or text of the record contains only the personal information of the individuals referred to and not the complainant.

In summary, the only information in the record that relates to the complainant is his name and telephone number. Therefore, I will consider the disclosure of only this personal information in my investigation.

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

I have already determined that only the complainant's name and telephone number qualify as the personal information of the complainant. My investigation is therefore limited to the disclosure of this personal information.

The complainant states that his personal information was inappropriately disclosed in two incidents – to the newspaper and at the open council meeting. The complainant states that he had not intended his letter to be made public and that he had put a "Cc" to the Township Personnel Committee as he believed it to be a personnel matter and believed that it would be dealt with in a closed meeting of the council. Further that he was not "asked or informed" that his letter would be addressed in an open council meeting nor if he wanted his letter published in the local newspaper.

In response to the complaint, the Township pointed out that neither the complaint letter nor the envelope was marked "Confidential"; also that it was copied to the Township Personnel Committee and the Atikokan Ratepayers Association. The Township provided background information to give context to the disclosures. The Township explained that the Atikokan Ratepayers Association was established when the Township passed its 2004 budget which included a tax increase. The ratepayers attended all council meetings and made presentations at many of them. It was the events at one of those meetings, specifically on June 29, 2005, that led to the complaint letter. It is important to note that the association is not associated with the Township and is not an institution under the *Act*.

The Township stated:

[The Township's] position on the complaint is that the letter received from [the complainant] was not treated any differently than any other correspondence received by this office. Further, it was treated in accordance with

1. long-standing practices in this office,
2. the Municipal Act,
3. the Municipal Freedom of Information and Protection of Privacy Act,
4. the Township of Atikokan Procedural By-law.

The Township provided the following information about its process for processing correspondence and communications that it receives. The Township explained that all correspondence addressed to the mayor is copied to the Council. The correspondence is required to be filed with the Clerk in accordance with By-law No. 01-96 (procedural by-law) which governs the proceedings of Council and Committees.

Section 19 of By-law No. 01-96 states:

Every communication, including a petition designed to be presented to the council, shall be legibly written or printed and shall not contain any obscene or improper matter or language and shall be signed by at least one person and filed with the Clerk.

The Township states that once a document is filed with the clerk, it becomes a public document and may be viewed by the public. In support of its position, the Township relies on section 253(1) of the *Municipal Act*:

Subject to the Municipal Freedom of Information and Protection of Privacy Act, any person may, at all reasonable times inspect any of the records under the control of the clerk including,

- (a) by-laws and resolutions of the municipality and of its local boards;
- (b) minutes and proceedings of regular, special or committee meetings of the council or local board, whether the minutes and proceedings have been adopted or not;
- (c) records considered at a meeting, except those records considered during that part of a meeting that was closed to the public;
- (d) the records of the council;
- (e) statements of remuneration and expenses prepared under section 284.

The Township points out that section 239(1) of the *Municipal Act* requires that “[e]xcept as provided in this section, all meetings shall be open to the public.

However, section 239(2) of the *Municipal Act* contains the following exceptions:

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

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advise that is subject to solicitor-client privilege, including communications necessary for that purpose;

The Township explained that the correspondence is added as an agenda item and attached for the next council meeting. The agenda and all attachments are available for public viewing from noon of the Friday preceding the council meeting to the completion of the meeting. Council meetings are usually held on the second and fourth Monday of each month, as set out in section 3(a) of the procedural by-law. The Township advised that at any time, the Mayor, council or a member of the public may request an item to be removed from the agenda. The Township advised that letters are generally read out aloud in whole or in part at the council meeting. The Township stated that this was exactly what was done in the present case.

The Township went on to explain that “the complainant’s letter was part of an ongoing public debate. Not only was it procedurally correct to keep it public, it was in the broader community good, given the overall context.” In support of its assertion that this was the norm, it provided written confirmation from the former Clerk/Treasurer stating that “this particular piece of correspondence was NOT dealt with any differently than any other has been for the past twenty-five years.” The Township also provided copies of agendas with attachments for various council meetings to demonstrate that all correspondence was treated in the same manner and that the authors were named on the agenda and their letters attached so that their issues and concerns could be dealt with in an open forum. The Township stated that there is no expectation of confidentiality on the part of these individuals because the process has always been a public one.

The Township stated that it does not consider that the disclosure was in non-compliance of the *Act*. It pointed out that it exercised its discretion to **not** discuss the complaint letter in a closed meeting of the council as the letter was the result of actions that took place at an earlier open council meeting and therefore, it was appropriate to do so in this forum.

With respect to the disclosure of the personal information to the newspaper, the Township confirmed that it did so on the day of the council meeting when the item was scheduled to be discussed. The Township explained that the councillor, who was one of the individuals named in the letter, mentioned it to an employee of the newspaper. The newspaper then requested a copy of the letter from the Township who complied. The Township stated that it did this on the premise that the letter had already been filed with the clerk and therefore was available to be viewed by the public and therefore, the newspaper staff. Further, that the newspaper would have requested it after the meeting anyway. The Township stated that it "saw no reason to withhold it". I note that the newspaper subsequently issued a correction statement that it had "misinterpreted segments of the letter written by [the complainant]." The newspaper also printed, with the complainant's consent, a complete text of his letter including his name but without his address and telephone number.

The Township provided its views on the possible application of the exemptions contained in the sections listed under Part I of the *Act*. The Township indicated that none of the exemptions applied to withhold access to the personal information at issue in this case. 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 for personal information and I need not consider the Township'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 Township 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) 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) therefore permits disclosure for the *original* purpose for which the information was collected or for a *consistent* purpose.

The Township stated that the personal information in the present case was treated in the same manner as all other correspondence that it receives. It was placed as an agenda item for discussion at an open council meeting for the purpose of addressing the subject matter of the complaint letter and that this was consistent with the purpose for which it was collected or compiled. The Township's position therefore, is that the personal information was disclosed for the same or original purpose for which it was collected i.e. to address the issue raised by the



complainant. The Township stated that within the framework of the *Municipal Act*, its procedural by-law and its mandate to address issues brought forward by the public, it not only had “the authority to release the record in question, it had an *obligation* to do so.”

The Township stated that members of the public who submit letters of complaint to the mayor and/or the clerk are aware that once their correspondence is filed with the clerk, it will be copied to the council and added to the agenda for the council meeting where it will be addressed in an open forum. The Township stated that there is no expectation of confidentiality or anonymity on the part of individuals who want to have their issues/concerns addressed by the mayor and council as this process has been in place for “over twenty-five years”. The Township confirmed that they do not notify the individuals prior to the council meeting but pointed out that the agenda and all agenda items are available at the clerk’s office for viewing from noon on the Friday before the council meeting up to the time of the meeting on Monday.

I have reviewed and carefully considered the complaint, the information provided by the complainant, the Township’s response and its submissions. It is apparent that the Township has established a process in keeping with the principles of open government and transparency of decision-making in open meetings. While it is commendable that the Township is committed to an open process where transparency is paramount, the disclosure of personal information in its custody and control must be balanced against and within that backdrop and within the parameters of the *Act*.

In considering all the facts of the case, it is clear that the complainant had attended open council meetings prior to the incident which led to the letter of complaint and was therefore familiar with the open process. It is also clear that the complainant submitted his letter of complaint to the mayor and council for the specific purpose of having the complaint addressed. In my view, it is not reasonable for a complainant to file a letter of complaint to be addressed by council and expect the complaint to be dealt with behind closed doors or in an anonymous fashion. This is especially the case in light of the fact that the complainant, by his own initiative, copied his letter to an association unrelated to the Township.

In the circumstances of this case, I conclude that the disclosure of the 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*.

Notwithstanding my conclusion above, it is significant to note the complaint resulted from certain expectations on the part of the complainant. While an institution has an obligation to balance transparency against the disclosure of personal information under the *Act*, there is also an onus on a complainant to carefully consider what personal information he/she is willing to have disclosed, in order to have their issues addressed in a public forum. The Township has provided information about a process that has been in place for over two decades and its position is that everyone should know about it. However, to prevent situations which may lead to complaints about disclosure of personal information, as in the present case, it may be worthwhile for the Township to establish a structure to ensure that every member of the public that files a document with the clerk 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 name and telephone number of the complainant qualify as personal information as defined in section 2(1) of the *Act*. The remaining information in the letter does not qualify as the personal information of the complainant.
2. The disclosure of the personal information was in accordance with section 32(c) of the *Act*.

Original signed by: \_\_\_\_\_  
Frances Soloway  
Investigator

June 28, 2005 \_\_\_\_\_