



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-050015-1

Town of Cochrane



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PRIVACY COMPLAINT NO. **MC-050015-1**

INVESTIGATOR: **Mark Ratner**

INSTITUTION: **Town of Cochrane**

SUMMARY OF COMPLAINT:

The Information and Privacy Commissioner/Ontario received a complaint under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a resident of the Town of Cochrane (the Town) regarding the disclosure of her personal information as well as the personal information of other residents of the Town to a reporter with a local newspaper. The complainant is a member of a citizens' group that was involved in a letter-writing campaign.

As part of the campaign, the complainant, along with other members of the citizens' group wrote approximately 3,000 letters (the records) to the provincial Ministry of Municipal Affairs and Housing (the Ministry) requesting that the Ministry investigate the way in which the Town's Council awarded a municipal contract. In addition to being sent to the Ministry, each letter contained a "cc" noting that it was copied to the local Member of Provincial Parliament, the Town Mayor, and Town Council.

On February 14, 2005, signed copies of each record were presented to Town Council during a Council meeting. The letters were presented to Council during a portion of the meeting that was set aside for "Petitions and Delegations." At the meeting, an employee of a company that unsuccessfully bid for the municipal contract addressed Council, and boxes containing the records were placed on table in front of Council members. At the same meeting, a Council member introduced a motion to have Council review the decision to award the contract. The motion failed.

During a break in the Council meeting, a reporter viewed the records. On February 18, 2005, an article authored by the reporter appeared in the Cochrane Times-Post that described the manner in which the records had been disclosed.

The complainant feels that this disclosure of the records to the reporter constituted an inappropriate disclosure of personal information under the *Act*.

RESULTS OF THE INVESTIGATION:

During the course of the investigation, I had conversations with both the Town and the representative of the complainant. In addition, both parties provided their respective positions in writing. I have also been provided with, and reviewed a videotape that includes portions of the February 14, 2005 Town Council meeting.

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,

...

(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,

...

(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;

...

I have reviewed samples of the records at issue that have been provided to this office. All records reviewed contain the signature of an individual, and some records contain the handwritten address of an individual. In addition, each record contains text that includes the opinions and views of the signatory to each record.

I am satisfied that the signature of each individual, along with the content of each record qualifies as personal information under section 2(1)(e) and (h) of the *Act*. In cases where the records include the address of the signatory, I am also satisfied that this information qualifies as personal information under the *Act*.

Was the disclosure of the “personal information” in accordance with section 32 of the *Act*?

In a written response to our office, the complainant stated:

A copy of the signed letters were given into the trust and care of the Corp. of the Town of Cochrane on February 14, 2005. However, I was later shocked to read in our local paper ... that their reporter had admittedly been given access to the letters ... and that he had an opportunity to “carefully review them”.

In response to the concerns raised by the complainant, the Town acknowledged that the records in question were disclosed to the reporter. The Town asserted, however, that the records had already been disclosed in a public meeting of Council and the disclosure was therefore, in accordance with the *Act*. In their correspondence to this office, the Town stated:

The Corporation of the Town of Cochrane wishes to go on record that ... it has “not improperly used or disclosed personal information contained in the letters presented to Council”. Furthermore, the subject letters were presented to Council at a public meeting in the form of a petition/delegation, and such information is collected, as it is necessary for the proper administration of the municipality.

The privacy provisions in the *Act* are premised on the notion that there must be a balance between an individual’s right to privacy and ability of institutions to collect, use or disclose personal information in order to carry out their legitimate functions. Section 32 of the *Act* recognizes this balance as it contains a general prohibition against the disclosure of personal information and a series of exceptions under which such a disclosure may take place. In order for a given disclosure of personal information to be permissible under the *Act*, at least one of the exceptions in section 32 must apply.

Section 32 of the *Act* states, in part:

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;

....

By virtue of this provision, a disclosure of personal information will be considered to be permissible under the *Act* where the disclosure takes place for the *original* purpose for which it was collected, or for a *consistent* purpose.

In this instance, to determine the purpose for which the information was “obtained or compiled,” it is necessary to consider the circumstances surrounding the way in which the Town obtained the records in question.

Each record in question was a letter addressed to the Ministry asking the Ministry to review or investigate the manner in which the Town Council had awarded a municipal contract, and each letter contained a “cc” addressed to the Mayor and Town Council. During the meeting, an individual presented the records to Council and made the following statement regarding the purpose of the presentation:

I would like to address Council to draw your attention to a number of shortfalls pertaining to how the Events Centre beverage proposal was evaluated.

At the same meeting Council voted on, and rejected a motion to reconsider the awarding of the contract.

Based on the facts surrounding the way in which information was presented to Council, I am satisfied that the Town’s collection of personal information in this instance was to help facilitate a public debate on the municipality’s decision regarding the contract, which was in accordance with the Town’s general administrative responsibilities.

Having identified the purpose of the collection of personal information, it is necessary to determine whether the disclosure of personal information was consistent with the original purpose and therefore in accordance with section 32(c) of the *Act*. To make this determination, it is helpful to examine the principles underlying meetings of municipal councils in the province of Ontario.

Under the *Municipal Act*, the province delegates certain powers to municipalities and establishes standards for responsible and accountable municipal government. One of the main ways in which accountability is fostered is through transparency with respect to process and meetings. Section 239(1) of the *Municipal Act* states “[e]xcept as provided in this section, all meetings shall be open to the public.”

A 2003 Report of this office, *Making Municipal Government More Accountable: The Need for an Open Meetings Law in Ontario* also addressed this principle and stated:

The principle of open government is a linchpin of democracy because it allows citizens to scrutinize the activities of elected officials and public servants to ensure that they are acting in the public interest.

Further, the Report stated:

Comprehensive open meetings laws facilitate citizen participation in the policy and decision-making process of government. They enhance the ability of the public to evaluate the performance of the individuals whom it has elected to represent its interests. Open meetings laws may also serve to build public

confidence in government by assuring the public that elected and appointed officials are serious about keeping corruption and favouritism out of the decision-making process.

In addition to the conduct of meetings, the *Municipal Act* requires openness and transparency with respect to records that are provided to council members in support of issues brought to the attention of a municipal council. Section 253(1) of the *Municipal Act* states:

253. (1) 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

In Privacy Complaint No. MC-040027-1, Investigator Frances Soloway considered the application of these principles to a similar set of circumstances. In that case, an individual had complained that the Township of Atikokan had inappropriately disclosed personal information contained in a letter that he had written to the Mayor of the Township. In that letter, the complainant had discussed what he felt was unprofessional behaviour on the part of a council member, the Clerk of the Township, and the Mayor. Subsequently, the contents of the letter were read aloud at an open council meeting and disclosed to a reporter for a local newspaper.

In determining whether the disclosure of the contents of the letter was for the original purpose for which it was collected and in accordance with the *Act*, Investigator Soloway considered the Township's longstanding practices, the provisions of the *Municipal Act*, the *Act*, as well as a procedural by-law of the Township, and concluded that the disclosure was in accordance with the *Act*. In the Investigation Report she stated:

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 in an anonymous fashion.

In this instance, I am satisfied that similar considerations apply. While the individuals involved in the letter-writing campaign had all addressed their letters to the provincial Ministry, they would have realized that the "cc" on each letter indicated that copies of each letter would also be provided to the Mayor and the Town Council. Further, because the subject matter of the records pertains to a decision of the Town Council, it would have been reasonable to expect that the records would be discussed in an open council meeting, and would therefore become part of the public domain.

I am therefore satisfied that the disclosure of personal information in question was for the original purpose for which it was collected, which was to facilitate an informed public debate on a matter that had been brought to the attention of Council, and that this disclosure was made in accordance with section 32(c) of the *Act*.

OTHER MATTERS

While I am satisfied that the Town did not act inappropriately by disclosing the records in question in this instance, this privacy complaint has brought to the light the fact that some individuals may be confused about the process that will be followed when information is provided to Town Council.

In order to deal with this matter, the Town has voluntarily decided to adopt a form letter that will be provided to all individuals making written requests, and/or submissions to Council. A copy of this form letter has been provided to this office.

The form letter advises individuals that requests and information provided will be placed on the agenda for a future council meeting and provides the date and time of the meeting. The form letter also advises recipients that the matter in question will be discussed during an open meeting of Council and that any questions should be directed to the Town Clerk.

I am pleased that the Town had decided to take this step, and that the Town will be diligent in providing this form letter to all individuals making written submissions to Council in the future.

CONCLUSIONS:

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

1. The signature, address and other information contained in the records in question qualifies as personal information as defined in section 2(1) of the *Act*.
2. The disclosure of personal information was in accordance with section 32(c) of the *Act*.

Original Signed by: _____

Mark Ratner
Investigator

January 13, 2006 _____