



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-050009-1

Municipality of Temagami



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télec: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. **MC-050009-1**

INVESTIGATOR: **Mark Ratner**

INSTITUTION: **Municipality of Temagami**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario received a complaint under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) regarding the Municipality of Temagami (the Municipality). The complainant was concerned that the Temagami Fire Department had inappropriately collected, used and disclosed his personal information. The Temagami Fire Department (the fire department) is a part of the Municipality of Temagami.

The privacy complaint relates to three separate but related incidents where the complainant feels that his personal information was inappropriately collected, used and/or disclosed.

INVESTIGATION:

During the course of investigating the complaint, I had discussions with both the complainant and the Municipality. The Municipality was asked to provide its position in response to the complaint. The complainant was also asked to provide me with any additional information that might be relevant to the complaint. I have carefully reviewed all the information provided by the parties.

The issues arising from the complaint which I will address are as follows:

- 1) Is the information identified by the complainant as having been collected, used and/or disclosed “personal information” as defined in section 2(1) of the *Act*?
- 2) Was the personal information collected by the Municipality in accordance with the *Act*?

- 3) Was the personal information used and/or disclosed by the Municipality in accordance with the *Act*?

I will address each incident in chronological order.

INCIDENT #1: FIRE ON COMPLAINANT'S PROPERTY

On May 30, 2003, the Municipality issued a burn permit to allow the complainant to have a brush fire on his property between May 30, 2003 and June 30, 2003. In accordance with the permit, the complainant burned brush piles on several days during June, 2003.

On June 25, 2003, the local fire crew from the Ministry of Natural Resources (MNR) as well as firefighters from the fire department attended at the complainant's property. According to the Municipality, the firefighters were responding to reports that a brush fire was taking place on the complainant's property.

Although the complainant was no longer burning brush, in response to a request from the MNR crew, he agreed to put out a small campfire on his property.

During this visit, MNR staff had conversations with members of the fire department. The complainant feels that during these conversations, his personal information was inappropriately collected by the fire department and that they disclosed his personal information to the MNR fire crew.

In a letter to our office, the complainant states:

The Chief also allowed his staff to attend to a fire at my property and when his staff arrived they went directly to the MNR fire crew and discussed my situation/information.

In response to the complaint, the Municipality stated:

The complainant does not identify what personal information was allegedly disclosed or used inappropriately. The complainant does not allege facts capable of supporting a finding that there was a violation of privacy legislation.

... The members of the Temagami Fire Department who attended this fire scene were interviewed. The information obtained was that only one (1) of these persons spoke to the MNR, and that the conversation was a general conversation with respect to the fire and what was done about it. There was no discussion of [the complainant].

The complainant acknowledges that he was not privy to this conversation, and has not provided me with any details with respect to the *specific* information that may have been collected or disclosed while the conversation was taking place.

As a result, I am unable to determine whether the information that may have been collected and/or disclosed by the fire department qualifies as personal information under section 2(1) of the *Act*.

Therefore, it is not necessary for me to address whether an inappropriate collection or disclosure of personal information had taken place during the course of incident #1.

INCIDENT #2: THE FIRE CHIEF'S "WILL-SAY"

The complainant is concerned that the Fire Chief of the Temagami fire department (the Fire Chief) inappropriately collected his personal information from a former MNR fire crew leader. The complainant states that the information in question is information relating to the history of fires on his property. In addition, the complainant is concerned that the Fire Chief inappropriately used this information in the will-say which he then disclosed to MNR.

In response to the complaint, the Municipality confirmed that in the days following the fire, the Fire Chief had a conversation with a former MNR fire crew leader who had previously been involved with fire response in the area where the complainant's fire had taken place. During the conversation, the two individuals discussed whether there had been a history of fires on the complainant's property.

After the conversation, the Fire Chief prepared a "will-say" document outlining his knowledge about the fires on the complainant's property, including information that was provided to him by the former MNR fire crew leader. The will-say was subsequently provided to MNR law enforcement personnel involved in investigating and prosecuting the complainant. I have reviewed a copy of the will-say which was provided to our office.

Was the information collected by the Fire Chief "personal information" as defined in section 2(1) of the *Act*?

The definition of "personal information" is provided in section 2(1) of the *Act*, which states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

- (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;

....

In this instance, the information at issue is information relating to the history of fires on the complainant's property.

I am satisfied that the information (which was eventually included in the will-say), including the complainant's name and other information about him that relate to events taking place on his property is the complainant's personal information under the *Act*.

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

Section 28(2) of the *Act* sets out the circumstances under which an institution can collect personal information, and 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].

In order for a given collection of personal information to be permissible, it must be shown to be in accordance with at least one of the three conditions set out in section 28(2).

In his correspondence to this office, the complainant stated:

... the Chief gathered information ... during a conversation one morning while driving to work. Subsequently the Chief prepared a Will Say to testify against me for a charge he had the Ontario Ministry of Natural Resources prepare.

In response to this aspect of the privacy complaint, the Municipality has acknowledged that a conversation took place between the Fire Chief and the former MNR crew leader regarding the history of fires on the complainant's property. However, the Municipality asserts that it possessed the legal authority to collect this information. In its reply to this office, the Municipality stated:

The collection of information by the Fire Chief with respect to the history of fires at the complainant's property is permitted by section 28(2) of the *Municipal Freedom of Information and Protection of Privacy Act* The *Fire Protection and Prevention Act* ... imposes upon the Fire Marshal the duty to investigate the "cause, origin and circumstances of any fire" ... [and] ... provides that the Fire Chief of every fire department is an assistant to the Fire Marshal.

The Municipality goes on to state:

In discharging the function of investigating the “cause, origin and circumstance of any fire” pursuant to the *Fire Protection and Prevention Act*, it is customary for the Fire Chief to look at the history of fires at a particular location to determine if there is a pattern. In discharging this function, the Fire Chief wanted to determine if there was a previous history of fires on the complainant’s property. The [an identifiable individual] ...as a former MNR fire crew leader previously involved with fire response in the area where the complainant’s fire occurred, provided the Fire Chief with this information.

I have reviewed the relevant provisions of the *Fire Protection and Prevention Act* and I agree with the Municipality that the Fire Chief’s actions in this regard were lawful. As such, I am satisfied that the collection of personal information in this instance was “necessary to the proper administration of a lawfully authorized activity” and therefore in accordance with section 28(2) of the *Act*.

Was the use and disclosure of the “personal information” in accordance with sections 31 and 32 of the *Act*?

The complainant has also raised concerns that the personal information contained in the will-say was inappropriately used and disclosed by the Fire Chief.

Permissible uses and disclosures of personal information are dealt with in sections 31 and 32, respectively, of the *Act*.

Section 31 of the *Act* states, in part:

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

....

This provision allows an institution to use personal information for the same purpose for which it was obtained or compiled, or for a purpose that is consistent with that original purpose.

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

32. An institution shall not disclose 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

...

This provision allows an institution to **disclose** personal information for the same purpose for which it was obtained or compiled, or for a consistent purpose.

In this instance, the Fire Chief **used** the information that was obtained from the former MNR crew leader to assist in the preparation of the will-say document and **disclosed** the information contained in the will-say to MNR. The purpose of the use and disclosure (law enforcement) was consistent with the purpose for which it was originally obtained or compiled.

As I have previously concluded above, the Fire Chief's collection of this information was permissible by virtue of the Fire Chief's duties under the *Fire Protection and Prevention Act*. Once the information had been collected, it was subsequently included in the Fire Chief's will-say, which was provided to MNR in order to assist with MNR's investigation of the fire. I am therefore satisfied that the Fire Chief's use and disclosure of this information was consistent with the purpose of the collection and was therefore in accordance with sections 31 and 32 of the *Act*, respectively.

INCIDENT #3: MARINA FIRE

On October 8, 2004 the complainant reported what he felt was an illegal fire taking place at the Temagami Marine to the fire department. At the time the complainant reported the fire, he requested that his identity be kept confidential.

Three days after reporting the fire, the complainant returned to the marina in order to retrieve items from his boat. From conversations with the owner of the marina, the complainant realized that the marina owner knew that the complainant was the individual who had reported the fire to the Temagami Fire Department.

With respect to this incident, the complainant is concerned that the fire department inappropriately disclosed his identity to the owner of the Temagami Marine.

Was “personal information” as defined in section 2(1) of the *Act* disclosed?

The complainant is of the view that his personal information had been inappropriately disclosed to the marina owner.

In response to this aspect of the privacy complaint, the Municipality advised:

The Municipality has looked into this allegation and concluded that the identity of [the complainant] was not disclosed to anyone by a member of that department nor by another employee of the Municipality of Temagami.

The Municipality has discovered that on the day of the fire, two (2) employees and the owner of the marina saw [the complainant] at the marina taking pictures of the fire. ... [T]he owner of the marina figured out for himself that it was [the complainant] who had reported the fire.

In my conversations with the complainant, he confirmed that he was visibly taking pictures at the marina on the day of the fire, and that marina staff would have been able to identify him as he was a client of the marina.

Based on this information, I am satisfied with the Municipality’s explanation as to how the marina owner learned that the complainant was the individual who reported the fire to the Municipality.

Having made this determination, it is not necessary for me to consider whether personal information was disclosed in accordance with the *Act*.

CONCLUSION:

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

Incident #1: Fire on Complainant’s Property

1. I have been unable to conclude that a collection or disclosure of “personal information” as defined in section 2(1) of the *Act* took place.

Incident #2: The Fire Chief’s “Will-Say”

1. I conclude that the information at issue is personal information as defined in section 2(1) of the *Act*.
2. I conclude that the collection of this personal information was in accordance with section 28 of the *Act*.

3. I conclude that the use of the personal information was in accordance with section 31 of the *Act*.
4. I conclude that the disclosure of the personal information was in accordance with section 32 of the *Act*.

Incident #3: Marina Fire

1. I am satisfied with the Municipality's explanation and a determination of disclosure of personal information under the *Act* is not necessary.

Original signed by: _____

Mark Ratner
Investigator

_____ March 21, 2006