



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-060007-1

Windsor Police Services Board



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INVESTIGATOR: **Mark Ratner**

INSTITUTION: **Windsor Police Services Board**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (IPC) received a privacy complaint from an individual regarding the Windsor Police Service (WPS). Specifically, the individual was concerned that the WPS had improperly disclosed an incident report containing his personal information in a manner that was contrary to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the Act).

Background

On August 28, 2003, an officer with the WPS prepared a Court Services Incident Report (the record) describing an incident involving the complainant.

The incident described in the incident report took place at the courthouse in Windsor and was prepared by the WPS officer while providing security services for the courthouse. The description of events contained in the incident report was based on the officer's own observations along with the observations of an Assistant Crown Attorney that was also present at the courthouse at the time of the incident. The incident report was prepared at the request of an individual who was engaged in legal proceedings involving the complainant and had been the complainant's lawyer in the past. This individual also provided the WPS officer with additional information pertaining to the complainant.

The incident report was then provided to the individual who had requested its preparation, and it was eventually included in a brief that was intended to be presented as evidence in a civil trial involving the complainant. During the legal proceedings, a copy of the record was provided to the complainant.

Upon receiving a copy of the record in the brief, the complainant concluded that the record had been prepared by the WPS and that it had been disclosed to his former lawyer. Accordingly, the complainant filed a privacy complaint with the IPC as he believed that the disclosure was in contravention of the *Act*.

During the course of this investigation, the complainant provided the IPC with a copy of a Statement of Disagreement in which he set out his objections to the information contained in the record. The complainant requested that the IPC require the WPS to attach the Statement of Disagreement to the record. In response to this request, I advised the complainant that a request for correction could not be dealt with as part of a privacy investigation. I advised the complainant that his request for correction should be directed to the WPS and in the event that his request was denied, he could then file an appeal with our office. Such an appeal would be processed under the IPC's appeal process, which is separate from the privacy complaint investigation process. The complainant indicated that he understood that his request for correction of the record was not part of this privacy investigation.

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*?
- Was the disclosure of the "personal information" in accordance with section 32 of the *Act*?

Is the information "personal information" as defined in section 2(1) of the *Act*?

In this case, the information in question is contained in the incident report that was prepared on August 28, 2003. I have reviewed the record and note that it contains the following:

- the complainant's name;
- the complainant's date of birth;
- the complainant's address;
- a physical description of the complainant; and
- a description of the complainant's activities on the afternoon of August 28, 2003.

The definition of "personal information" is set out in section 2(1) of the *Act*, and 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,
...
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
...
- (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.

Based on my review of the record, I am satisfied that the information in question clearly qualifies as "personal information". I note that neither the WPS, nor the complainant, disputes this conclusion.

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

Section 32 of the *Act* establishes a basic prohibition on the disclosure of personal information, but states that personal information may be disclosed in certain enumerated exceptional circumstances.

Therefore, in order to determine whether a given disclosure of personal information is permissible under the *Act*, it is necessary to assess whether the disclosure fits within any of the exceptions set out in section 32.

Section 32 of the *Act* states:

An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.

In order for a given disclosure of personal information to be permissible, the institution needs to demonstrate that the disclosure has taken place in accordance with one of the section 32 exceptions.

In determining whether the WPS' disclosure of the record in this instance was appropriate, I have reviewed previous Privacy Complaint Reports issued by the IPC that deal with the treatment of police incident reports.

I note that police incident reports containing personal information are required to be confidential, and not disclosed without the consent of the individual(s) to whom the information relates. This principle has been affirmed in previous Privacy Complaint Reports prepared by the IPC including MC-010026-1, I93-031M and I95-096P.

In this case, the WPS has taken the position that its disclosure of the record at issue was in accordance with section 32(c) of the *Act*, which permits disclosures of personal information for the same purpose for which the information was obtained or compiled, or for a purpose that is consistent with that original purpose. In support of this position, the WPS has expressed that its decision to disclose the record was based on the following considerations:

1. The complainant's former lawyer requested that the incident report be submitted to document the incident,
2. The former lawyer requested a copy of the incident report that had been submitted,
3. The former lawyer is an officer of the court,
4. The former lawyer is named in the incident report, and
5. The incident took place in public and other individuals were witnesses and aware of the incident.

To summarize, the WPS' position is that the purpose of its disclosure of the record was **consistent** with the reason why the record was created in the first place, and in this way, the disclosure was made in accordance with section 32(c).

Where information has been collected directly from an individual, a "consistent purpose" is defined in section 33 of the *Act* as follows:

The purpose of a use or disclosure of personal information that has been collected **directly** from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure [emphasis added].

In this case, however, the personal information about the complainant had been collected **indirectly**. Where personal information is collected indirectly, a consistent purpose is one where the purpose for the disclosure is "reasonably compatible" with the purpose for which it was obtained or compiled. [See, for example, MC-010032-1 and MC-010036-1]. As such, I will consider each justification put forward by the WPS, and I will determine whether each reason cited demonstrates that the purpose of the disclosure is **reasonably compatible** with the purpose of the indirect collection.

The complainant has provided a response to the WPS' general position, which I will consider below.

With respect to reasons 1 and 2, above, the WPS is taking the position that its preparation, and subsequent disclosure of the incident report was permissible by virtue of the fact that it had been requested by complainant's former lawyer.

In Privacy Investigation Report I95-096P, the IPC considered a different, but analogous set of circumstances. In that case, the IPC considered whether the Ontario Provincial Police's disclosure of occurrence reports and witness statements to an insurance company were in accordance with section 42 of the *Freedom of Information and Protection of Privacy Act* (which is the provincial equivalent of section 32 of the *Act*). In I95-096P, the records in question had been created during the OPP's law enforcement investigation of a fire.

In arriving at the conclusion that the OPP's disclosure of the records was not in accordance with section 42(c), the IPC stated:

Although a law enforcement investigation and an investigation by a private company may be related, they would serve different purposes - one, to enforce the law; the other, to serve the interests of the private organization, financial or otherwise. ... Thus, it is our view that the disclosure of personal information for the purpose of furthering the insurance investigation **was not reasonably compatible** with the purpose of furthering the law enforcement investigation. Therefore, it is our view that the personal information that was indirectly collected was not disclosed in compliance with section 42(c), for a consistent purpose [emphasis added].

As expressed above, the purpose of the preparation of police incident reports is to assist the police in carrying out law enforcement investigations. As expressed above, the police's disclosure of police investigation information to an insurance company in order to assist the insurance company in its potential civil legal proceedings was found to not be reasonably compatible with a law enforcement purpose, and therefore not a "consistent purpose". Likewise, in this case, the WPS' disclosure of the record to the complainant's former lawyer would not be reasonably compatible with the law enforcement purpose underlying the collection of the information, and would therefore not constitute a "consistent purpose" within the meaning of section 32(c) of the *Act*.

With respect to reason 3, the WPS has asserted that the complainant's former lawyer was an "officer of the court" and therefore entitled to receive the information in question. The complainant has responded to this aspect of the WPS' position and has stated:

... I contend the rank 'Officer of the Court' does not grant, permit or infer any additional or privileged access to personal information beyond the scope normally afforded the position of the rank holder, sans rank.

For example: the defence lawyers' permitted access to Crown disclosure is limited to those cases in which they currently represent the accused. As court officers they are not entitled to disclosure for every case; but their rank, "officer

of the Court” does demand considerable discretion in their use of any information obtained or chanced upon via their position at court.

In this context, the use of the term “officer of the court” refers to the fact that the individual in question is a lawyer, (*i.e.*, a member of the provincial law society). In this case, I agree with the complainant’s position that the mere fact that someone is a lawyer does not entitle that individual to any special rights with respect to accessing personal information.

As such, I am not satisfied that the fact that the individual receiving the information happened to be a lawyer makes the disclosure reasonably compatible with the collection and a “consistent purpose” under section 32(c) of the *Act*.

With respect to reason 4, the WPS has taken the position that the lawyer was entitled to have access to the incident report by virtue of the fact that she is referred to in the incident report as the complainant’s lawyer.

In response to this claim, the complainant has stated that while the individual had been his lawyer in the past, she was no longer his lawyer at the time of the incident in question. To support this position, the complainant has provided documentation demonstrating that the solicitor-client relationship between the complainant and the individual had been severed on June 2, 2003, which was more than two months prior to the August 28, 2003 incident.

In consideration of the fact that the individual was no longer representing the complainant, I am satisfied that the fact that the individual had been the complainant’s lawyer **in the past** cannot be used to justify the disclosure of the incident report, and would not be considered to be a reasonably compatible “consistent purpose” under the *Act*.

Based on the material provided to the IPC, it appears that the officer may have been under the impression that the individual was still the complainant’s lawyer at the time of the incident, and was not aware that the solicitor-client relationship between the complainant and the lawyer had been severed as of August 28, 2003. However, in my view, the circumstances surrounding the incident should have indicated to the officer that the lawyer’s request to receive a copy of the incident report was not a request made on behalf of her client.

With respect to reason 5, I have also considered the fact that the incident in question had occurred in public and the fact that the complainant’s lawyer had independent knowledge of the claims raised in the report. However, I am not satisfied that these considerations justify the disclosure of the incident report to the lawyer. The fact that an incident may have occurred in public does not entail that a police record containing personal information documenting that incident is properly considered to be part of the public domain.

Additionally, the WPS had also expressed that one of the considerations that made the disclosure in question appropriate was the fact that the lawyer had been named in the incident report. I have reviewed the incident report and note that it does contain reference to the statements made by the complainant regarding the lawyer.

However, in my view, the fact that an individual is referenced in a record does not give that individual an unqualified right to access all of the information contained in a record of someone else's personal information. While the lawyer may have a right to access the portions of the record containing her personal information, such information would have had to have been provided in "severed" form – meaning that the complainant's personal information should have been omitted from the record before it was provided to the lawyer.

Therefore, I am not satisfied that the information was disclosed for a reasonably compatible purpose, and the disclosure was not in accordance with section 32(c) of the *Act*.

To summarize, I have considered all of the relevant information provided by the WPS, and I am not satisfied that its disclosure of the incident report was reasonably compatible with the purpose of its collection. Police incident reports are prepared for the purpose of law enforcement, and are intended to be used in the process of investigating and prosecuting potential criminal acts. In this case, the disclosure of the incident report to the complainant's former lawyer was not related to a criminal investigation or prosecution, but rather, was disclosed because the complainant's former lawyer had an interest in, and had requested, that information. In my view, and in accordance with I95-096P, the fact that a person has an interest in a record of personal information does not in itself entail that disclosure is "reasonably compatible" with the collection and in accordance with the *Act*.

Further, I have also reviewed the remaining exceptions contained in section 32 of the *Act*, and I am satisfied that none of these exceptions may be used to justify the disclosure that took place.

As such, I conclude that the disclosure of the complainant's personal information contained in the incident report was not in accordance with section 32. However, in this case, I am of the view that the disclosure may have been based on an honest mistake on the part of the officer. In light of the circumstances, I am satisfied that no recommendations are necessary to prevent similar incidents from occurring in the future.

CONCLUSION:

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

- The information in question qualifies as the complainant's "personal information" under section 2(1) of the *Act*.
- The complainant's personal information was not disclosed in accordance with section 32 of the *Act*

Original Signed By: _____

Mark Ratner
Investigator

January 9, 2007 _____