



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-060026-1

Township of Augusta



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PRIVACY COMPLAINT NO. **MC-060026-1**

INVESTIGATOR: **Mark Ratner**

INSTITUTION: **Township of Augusta**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (IPC) received a complaint under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) involving the Township of Augusta (the Township). The complainant is concerned that a representative of the Township's council inappropriately disclosed her personal information.

Background

On March 22, 2006, the complainant in this Privacy Complaint sent an e-mail to the Township stating that she would like to be a delegate at the next meeting of the Township's Council. The text of the e-mail stated:

I would like to be a delegate at the next council meeting to speak about the
Kennel licenses and the OSPCA.

The complainant's e-mail was sent from her work e-mail account.

On April 12, 2006, the complainant was informed by her work supervisor that a member of the Township's Council had provided a copy of the e-mail to her employer. (The complainant's employment position was not related to the Township). The Council member had contacted the complainant's employer to inform the employer that the request to be a delegate had originated from the complainant's work e-mail account.

The complainant was subsequently dismissed from her employment position.

The complainant is concerned that the disclosure of her e-mail by the Council member to her employer was inappropriate, and was not in compliance with the provisions of the *Act*.

DISCUSSION:

The following issues were identified as arising from the investigation:

- Were the actions of the Council member subject to the *Act*?
- 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*?

I will deal with each issue in chronological order.

Were the actions of the Council member subject to the *Act*?

Previous Orders and Privacy Complaint Reports issued by the IPC have dealt with the question of whether the actions of members of municipal councils are subject to the provisions of the *Act*. In Order MO-1264, the IPC concluded that municipal councillors are not considered to be “officers or employees” of an institution. However, the IPC has also concluded that the activities of councillors would be subject to the *Act* if those activities related to information that is in the custody or control of a municipality [see MC-020030-1 and MC-050018-1].

Privacy Complaint Report MC-020030-1 involved the disclosure of an e-mail containing personal information by a councillor with the City of Niagara Falls. In reaching the conclusion that the information was subject to the *Act*, the IPC stated:

As regards disclosure by a councillor other than the Mayor, I have already concluded that City councillors are neither officers nor employees of the City. Nevertheless, records in the possession of a councillor are subject to the *Act* if they are within the custody or control of the City. This assessment depends, in part, on whether the information was held by the councillor solely in his or her capacity as a constituent representative and never integrated into the municipality’s files (Orders M-846, M-813). In this case, I have concluded that the information related to City business and was not solely a constituency matter, as indicated by the fact that the information was originally provided to the councillors by the City.

In Order 120, former Commissioner Sidney B. Linden set out a list of factors to consider in deciding whether records are within an institution’s custody or under its control. Whether the record was created by an officer or employee of the institution, and whether its content relate to the institution’s mandate and functions are both identified as factors to consider, and in my view, these factors, in addition to the fact that the City provided the information to the councillors, and that it did not pertain to constituency matters, all support the conclusion that

the e-mail remained within the City's control. I have therefore concluded that, in the councillors' hands, the e-mail was under the City's control.

In the case of this complaint, the record in question is an e-mail addressed to the Chief Administrative Officer (CAO) for the Township. On receipt, the record became a record in the custody of the Township. In this case therefore, as in MC-020030-1, the fact that the record was collected during the course of municipal business, and was not solely related to a constituency matter, entails that it is properly considered to be a record of the municipality, and therefore subject to the *Act*.

Based on this reasoning, I am satisfied that the councillor's handling of the record in question is subject to the provisions of the *Act*.

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

In this case, the information at issue is the information contained in the e-mail that was provided to the complainant's employer.

I have reviewed a printed copy of the e-mail and note that it contains the complainant's name, her job title, her work e-mail address, and her request to be a delegate at the next meeting of Council.

Section 2(1) of the *Act* states, in part:

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

...

- (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

....

In the past, the IPC has found that information associated with a person in a professional capacity is not their personal information [see, for example, Order PO-2225]. On this basis, the complainant's work e-mail address and her job title would not be considered to be her personal information.

However, other information contained in the e-mail, such as the complainant's name together with her request to be a delegate at the next Council meeting was personal in nature, as it was not made during the course of her professional duties.

As such, I am satisfied that the record contains both personal and professional information. Specifically, I am satisfied that the complainant's name, as well as her request to be a delegate at the next council meeting of the Township qualifies as "personal information" under the *Act*.

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

Having determined that the councillor’s actions are subject to the *Act*, it is necessary to determine whether the disclosure by the councillor was in accordance with the *Act*.

Section 32 of the *Act* establishes rules pertaining to the disclosure of personal information by an institution. The provision states that the disclosure of personal information is prohibited unless one of the statutory exceptions contained in section 32 applies to make the disclosure in question permissible.

The provision 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 spouse, a close relative 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 [emphasis added].

I have reviewed section 32, and I have determined that the provision that is most likely to apply to this disclosure is section 32(c), which permits a disclosure of personal information for the **same** purpose for which it was obtained or compiled, or for a purpose that is **consistent** with that original purpose.

In this case, the disclosure at issue is the disclosure of an e-mail to an individual's employer by a councillor of the Township. In order for this disclosure to have been in accordance with section 32(c), therefore, the Township must demonstrate that the purpose of the disclosure by the Councillor was consistent with the original purpose of the collection of personal information.

Section 33 provides guidance in applying the section 32(c) "consistent purpose" provision, and states:

The purpose of a ... disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clause[s] ... 32 (c) only if the individual might reasonably have expected such a ... disclosure.

In sum, sections 32(c) and 33, taken together, operate to permit the disclosure of an individual's personal information where the individual might reasonably have expected the disclosure to have taken place.

In support of the position that the disclosure was permissible, the Township has stated:

We would then direct your attention to the Municipal Act SO 2001, chapter 25. In the definition section of record, it defines what records are for the purpose of this particular Act, and you will note that correspondence is deemed to be a record. We would then direct your attention to Section 253(1) which states that any person can view the records of the Municipality. The Township's position is

that this is not a personal record of [the complainant] but rather a record of the Municipal Township which is completely accessible by the public.

Section 253(1) of the *Municipal Act*, which has been referenced by the Township, states:

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.

To further support its position, the Township has also provided the IPC with a copy of the full agenda, including all attachments, for the March 27, 2006 and August 12, 2006 council meetings. (The March 27, 2006 meeting materials include the complainant's e-mail request). The Township has stated that full agendas (including attachments) are routinely made available to the press and are available to any member of the public on request.

To summarize the Township's position, it has stated that it is required under the *Municipal Act* to maintain all records that will be considered at Council meetings in a manner that is accessible to the public. It has also provided further information to demonstrate that the record at issue in this privacy complaint was one that was accessible to the public. Further, the Township maintains that the disclosure of a record that is accessible to the public cannot constitute a breach of the provisions of the *Act*.

In terms of the complainant's position, the complainant has stated that she had sent the e-mail request to the Township because she was instructed by a Township Official to make the request in writing. The complainant has stated that she was not aware that her e-mail request would become a matter of public record as full agendas (including attachments) are not proactively provided to members of the public attending Council meetings.

I have reviewed the information provided by both parties to this privacy complaint. I note that the website for the Township contains instructions on how an individual may make a request to make a delegation at a Council meeting, and states:

Persons desiring to present information verbally on matters of fact or make a request of Council shall give notice to the Clerk not later than 4:30 p.m. on the last Wednesday preceding the commencement of the meeting of the Council. There will be one spokesperson per delegation.

Delegations not listed with the Clerk prior to the meeting may be heard upon unanimous consent of Council but decision may be deferred on the matter in question until further study.

The notification must be in writing and can be sent either in a letter by mail, or by e-mail to the cao@augusta.ca.

With respect to the *Municipal Act* provisions outlined above, I note that section 253(1) of the *Municipal Act* is premised on the notion that the operation of municipal government is intended to be transparent to the public. This principle is reflected in the wording of both the *Act* and the *Municipal Act*, which both contain provisions relating to open government and accessibility to government records. Therefore, while I accept that the attachments are not included in the agendas that are distributed at Council meetings, these documents are available to be viewed by any member of the public upon request.

It is important to note that neither the *Act* nor the *Municipal Act* provides an unqualified right of access to **all** records in the custody of a municipal government. In the case of the *Municipal Act*, this qualification is present in the wording of section 253(1), which states that the general right to inspect records is subject to the *Act*. Likewise, in the *Act*, the right to access records in the custody of a municipality is subject to various exemptions as well as Part II of the *Act*, which deals with personal privacy.

However, in applying the principles outlined above to the facts of this privacy complaint, I am mindful of the fact that the complainant had written to the Township with the express purpose of appearing before Council in an open public meeting. Therefore, it is clear that the personal information collected from the complainant was for the purpose of putting it on the agenda. Consistent with the principles of openness and transparency, the public and the Council members are allowed to view this information. As such, I am of the view that it should have been reasonable for the complainant to expect that the contents of her e-mail would be subject to inspection by both members of council and the public at large. For the Township to have treated this record in any other manner would have constituted a violation of the principles enunciated in the *Municipal Act*.

I am therefore satisfied that the record at issue in this privacy complaint was collected for the purpose of putting it on the agenda of an open public meeting and that the disclosure of the personal information was consistent with that purpose. Once the information is in the public domain, it may be used in ways that are unforeseen to the individual to whom it relates.

Accordingly, I am satisfied that the disclosure in this instance qualifies as a “consistent purpose” and is therefore in accordance with section 32(c).

CONCLUSION:

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

- The record contains “personal information” as defined in section 2(1) of the *Act*.
- The disclosure of the complainant’s personal information was in accordance with section 32(c) of the *Act*.

OTHER MATTERS

In this Privacy Complaint Report, I have stated that the Township’s disclosure of a record containing the complainant’s personal information was a disclosure that was in accordance with the provisions of the *Act*. I have come to this conclusion as a result of considering the applicable provisions of the *Act*, as well as the public nature of the record at issue.

Having reached this conclusion, I remain concerned that the actions of the councillor, while not technically a violation of the *Act*, may have been inappropriate. The principles of transparency and open municipal government that are reflected in the wording of the *Act* and the *Municipal Act* are in place to encourage openness with respect to deliberations of municipal councils.

However, in this case, the disclosure that took place was a disclosure to the complainant’s employer. As such, it is questionable whether the Councillor’s intention in disclosing the record and his actions were in keeping with the general principles of transparency and open government.

In some instances, municipal councillors will have access to personal information that is highly sensitive in nature. Accordingly, I would like to take this opportunity to remind municipal councillors of their responsibilities as custodians of municipal records.

Original Signed by: _____
Mark Ratner
Investigator

February 28, 2007 _____