



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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC07-23 and MC07-24

Peel Regional Police Services Board and
Regional Municipality of Peel



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PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. **MC07-23 and MC07-24**

INVESTIGATOR: **Mark Ratner**

INSTITUTION: **Peel Regional Police Services Board and
Regional Municipality of Peel**

SUMMARY OF COMMISSIONER INITIATED COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (IPC) received a letter from an individual (the source) expressing concerns regarding a program referred to as the “Region of Peel Crime Free Multi-Housing Program” (the Crime Free Program). The program consists of a partnership between the Region of Peel (the Municipality) and the Peel Regional Police (the Police).

According to the letter, the Crime Free Program is multi-faceted, and its goal is the reduction of the incidence of crime on Peel Living property. The Crime Free Program is in operation on a pilot basis at 10 Peel Living sites. Although the writer of the letter stated that she did not object to most aspects of the Crime Free Program, she expressed concern over the potential sharing of information about tenants residing in the non-profit housing sites between Peel Living and the Police.

The source stated that prospective tenants for housing are required to sign a “Tenancy Agreement Addendum” (the Addendum) as part of their tenancy application to Peel Living. A copy of the Addendum was provided to the IPC.

The Addendum states, in part:

Neither I/we as tenant(s), nor any member of my/our household, any guest or occupant of the rental unit, nor any persons invited on or near the residential complex by me/us or any member of my/our household, shall engage in any criminal activity, including but not limited to offences under the Criminal Code of Canada, the Controlled Drugs or Substances Act, or any other law or statute or regulation which could affect the character of the residential complex.

I/we agree that if I/we default in any provision of this Addendum, the Landlord will take appropriate proceedings to end my/our tenancy.

...

A single violation of any of the provisions of this Addendum shall be deemed a serious violation and material non-compliance with the Tenancy Agreement. It is understood and agreed that a single violation shall be good cause for a notice to end a Tenancy. Unless otherwise provided by law, proof of a violation shall not require criminal charge or conviction.

...

Should incidents occur resulting in police involvement, I agree to allow the investigating police service to release information to the Landlord. This is in accordance with the Municipal Freedom of information and Protection of Privacy Act.

The author of the letter expressed her opinion that the collection of Police occurrence information by Peel Living (as well as the disclosure of this information by the Police to Peel Living) constitutes an improper collection and disclosure of personal information under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act).

The IPC commenced an investigation into the complaint and Commissioner-initiated privacy complaint files were opened with both the Police (MC07-23) and the Regional Municipality of Peel (MC07-24). For the purposes of this Report, I will refer to the Regional Municipality of Peel as Peel Living.

Background Information

During the course of the investigation, both the Police and Peel Living provided the following information about the Crime Free Program.

Under the Crime Free Program, Peel Living has entered into an MOU (Memorandum of Understanding) with the Police. Among other things, the MOU provides for the disclosure of police occurrence information by the Police to Peel Living. Currently, the Crime Free Program has been implemented on a pilot basis at 10 Peel Living sites.

The Police elaborated on the extent of information that is shared between the two agencies and have explained that the Police provided bi-weekly reports identifying occurrences taking place on Peel Living property (the Occurrence Lists). The information contained on the Occurrence Lists include the incident file number, date of occurrence, lot number, street name, apartment number, incident description, and an occurrence description. The Police explained that not all occurrences are reported to Peel Living in the Occurrence Lists, and provided a list of occurrence types that **would** be reported. The list of occurrence types that would be reported includes most criminal acts such as assaults, sex offences, and drug offences. The Police also provided a copy of an Occurrence List for the period of time commencing May 1, 2006, and ending May 20, 2007.

Peel Living stated that, in addition to the Occurrence Lists provided by the Police, the Police verbally provide additional information to Peel Living regarding certain incidents that are considered to be serious. The additional information that is provided consists of the details giving rise to the occurrence, including the names of the individuals involved. From the period of May 2006 to December 2006, additional information was provided regarding 19 incidents.

The Police advised the IPC that the collection and disclosure of personal information under the Crime Free Program has been suspended pending the outcome of this privacy complaint.

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?

The information at issue in this complaint is the information that is provided by the Police to Peel Living in the Occurrence Lists. There is also the more detailed information that is provided verbally by the Police to Peel Living. A sample copy of an Occurrence List was provided by the Police to this office, and I have reviewed this sample Occurrence List.

As I indicated above, the information on the Occurrence List includes:

- Incident file number;
- Date of occurrence;
- Lot number, street name and apartment number;
- Incident Description; and
- Occurrence description.

The definition of “personal information” is set out in section 2(1) of the *Act*, which states, in part:

“personal information” means recorded information about an identifiable individual, including,

...

- (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,

...

- (d) the address, telephone number, fingerprints or blood type of the individual,

...

Peel Living stated that the information collected from the Police qualifies as personal information as defined above. However, the Police have taken the position that the records in question do not contain personal information and stated:

It is our submission that the information contained within the Occurrence List does not constitute personal information for the purposes of the *Act*. While the municipal addresses of the properties were included within the list, the names of the individuals involved in the criminal activity were not. The identification of the municipal address alone would not automatically equate the police activity with an identifiable individual.

The Police refer to Order M-15 and Order M-197 in support of its position that because the information in question does not include the individual's name, it does not consider the information to be "personal information" under the *Act*.

However, the IPC also more recently held that information will qualify as "personal information" if there is a reasonable expectation that an individual can be identified by the information in question [see Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

In determining whether the records at issue in this privacy investigation qualify as records containing "personal information," it is important to consider the context in which they are used. In this case, the records are provided by the Police to Peel Living. As a landlord, Peel Living would have a list of all of the tenants residing at the various addresses appearing on the Occurrence List. Accordingly, by having the records with municipal addresses, Peel Living would be able to surmise which tenants were the subjects of calls from the Police, as well as the reason for the calls.

In my view, the fact that Peel Living is able to match tenant names to the address information provided by the Police entails that there is a reasonable expectation that an individual can be identified by the information in question. In fact, based on the information provided by both the Police and Peel Living, the very purpose of the Crime Free Program is the identification of individuals that have had contact with the Police. Accordingly, I am satisfied that the information in question qualifies as "personal information" under section 2(1) of the *Act*.

Peel Living indicated that in addition to the information contained in the Occurrence List, the Police also provide additional, more detailed information regarding certain occurrences that have been "flagged" as serious. I have already concluded that the information contained on the Occurrence List qualifies as personal information, and on that basis, I am also satisfied that the more detailed information would also qualify as "personal information" under section 2(1) of the *Act*.

Having determined that the information provided by the Police to Peel Living qualifies as "personal information," I will now separately consider the permissibility of the following: (1) Peel Living's collection of the personal information under 28(2) of the *Act*; (2) the adequacy of

the Notice of Collection under section 29(2) of the *Act*; and (3) the Police's disclosure of personal information under section 32 of the *Act*.

Was collection of the "personal information" by Peel Living in accordance with section 28(2) of the *Act*?

The personal information that is collected by Peel Living is the information that is contained in the Occurrence Lists. As stated above, additional information is provided regarding certain serious incidents. The rules relating to the collection of personal information are set out in section 28(2) of the *Act*, which 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.

Section 28(2) permits the collection of personal information where at least one of the above three conditions applies. In this case, Peel Living has stated:

The collection of personal information by Peel Living is in support of administering its lawfully authorized activity, which is the provision of rental housing, in accordance with the *Residential Tenancies Act*.

Information collected is used to assist Peel Housing Corporation in fulfilling its duties and obligations as a landlord to ensure the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant does not **substantially interfere with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.**

[Emphasis added].

I have reviewed the *Residential Tenancies Act* and note that section 64(1) deals with the process through which a landlord may initiate the process of ending a residential tenancy.

This statutory provision states that grounds for terminating a tenancy include conduct by a tenant "that substantially interferes with the reasonable enjoyment of the residential complex" or "substantially interferes with another lawful right, privilege or interest of the landlord or another tenant".

Therefore, Peel Living has taken the position that its collection of personal information is "necessary to the proper administration of a lawfully authorized activity". This condition has also been referred to as the "necessity condition". Peel Living states that the lawfully authorized activity in question is the provision of rental housing, which includes the right of landlords to

terminate a tenancy where a tenant interferes with the reasonable enjoyment of the residential complex.

Peel Living asserts that the collection of the personal information in the Occurrence Lists and the verbal exchanges of information is necessary to the prevention of substantial interference with the reasonable enjoyment of the residential complex and the prevention of substantial interference with another lawful right, privilege or interest of the landlord or another tenant.

In *Cash Converters Canada Inc. v. Oshawa (City)*¹, the Ontario Court of Appeal made reference to past decisions of the IPC in interpreting the necessity condition and stated:

In cases decided by the Commissioner's office, it has required that in order to meet the necessity condition, the institution must show that **each item or class of personal information** that is to be collected is necessary to properly administer the lawfully authorized activity. Consequently, where the personal information would merely be helpful to the activity, it is not "necessary" within the meaning of the Act. Similarly, where the purpose can be accomplished another way, the institution is obliged to choose the other route.

[Emphasis added]

Accordingly, in order to demonstrate that a specific collection of personal information is permissible under the necessity condition set out in section 28(2) of the *Act*, the institution in question must show that the collection of each item or class of personal information is necessary to administer the lawfully authorized activity.

In applying this general rule to facts of this privacy investigation, Peel Living is required to demonstrate that the collection of each item or class of personal information is necessary to the prevention of substantial interference with the reasonable enjoyment of the residential complex or the prevention of substantial interference with another lawful right, privilege or interest of the landlord or another tenant.

The information in the Occurrence Lists provided by the Police to Peel Living relates to a broad range of Police occurrences. Having reviewed the list of occurrence types, I note that many of the listed occurrences refer to incidents that would be considered to be criminal acts, for instance, assault, fraud, and drugs. On the other hand, incidents such as "assist citizen," "attempt suicide" and "mentally ill" would not normally be considered to be illegal acts. The Occurrence Lists do not denote whether the Police calls eventually led to criminal charges.

Based on the information provided by Peel Living, it is not clear that **all** of the information provided by the Police is necessary to the administration of a residential housing complex.

From May 2006 to December 2006, more than 500 incidents were reported through the Occurrence Lists by the Police to Peel Living. Of these incidents, only 19 resulted in more detailed verbal discussions between the Police and Peel Living. The fact that only 19 of these

¹ (2007) O.J. No. 2613

incidents led to conversations between the Police and Peel Living suggests that some of the incidents on the Occurrence List were not significant.

Based on the information provided, I am not satisfied that the collection of **all** of the information on the Occurrence Lists satisfies the necessity condition of section 28(2) of the *Act*. Having reached this conclusion, Peel Living's collection would still be permissible if it can be shown that it satisfies at least one of the remaining section 28(2) conditions (*i.e.*, if the collection is either expressly authorized by statute, or used for the purposes of law enforcement). Peel Living has not provided me with any information demonstrating that these two exceptions apply in the circumstances of this complaint.

Based on all of the above, I conclude that the routine collection of **all** the Occurrence List information is not in accordance with the *Act*.

In what follows, I will be recommending that the Police and Peel Living jointly develop criteria to limit the extent of Police call information that is provided by the Police to Peel Living. In order to ensure that Peel Living is able to administer its responsibilities under the *Residential Tenancies Act*, the criteria should permit the disclosure of occurrence information that relates specifically to criminal charges or other exceptional circumstances that impact the reasonable enjoyment of tenants or interferes with a lawful right, privilege or interest of the landlord or another tenant. The subsequent verbal disclosure by the Police to Peel Living would also be subject to these criteria. These criteria should be provided to the IPC for review prior to being formally adopted.

Did Peel Living provide a Notice of Collection to tenants in accordance with section 29(2) of the *Act*.

Under the *Act*, institutions engaged in the collection of personal information are required to provide individuals with formal notice of the collection of their personal information. This notice requirement is set out in section 29(2) of the *Act*, which states:

If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

Accordingly, under the *Act*, institutions are required to provide individuals that are subject to a collection with a Notice of Collection containing the elements listed above.

In this case, with respect to the collection of the Occurrence Lists, Peel Living advised that a form of notice has been provided to tenants. This notice is contained in the tenancy agreement signed by each tenant and states:

In accordance with the *Human Rights Code, 1981*, your application for tenancy and subsequent tenancy shall be accorded equal treatment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance.

Direct inquiries regarding the *Municipal Freedom of Information and Protection of Privacy Act* to the Region of Peel, Housing and Property department, Supervisor Document Services

In the materials provided to the IPC, Peel Living acknowledged that the above notice does not satisfy all of the requirements set out in section 29(2) of the *Act* and stated:

... Peel will undertake a review of the collection notice and apply changes in accordance with the *Act*, quoting its authority under applicable legislation, such as the *Residential Tenancies Act*.

I am pleased that Peel Living has committed to modifying its legal authority for the collection of personal information in accordance with the requirement under section 29(2)(a). The amendments to the notice should also set out the purpose for which the personal information is to be used.

I further note that specific information pertaining to the Crime Free Program is provided to tenants on the Addendum. While I am pleased that this information is being provided, I note that it is only provided to new tenants at the time that they are signing their respective tenancy agreements, and it is not provided to existing tenants. Therefore, in order to ensure that all tenants are aware of the Crime Free Program, I will be recommending that Peel Living send a letter to each tenant explaining the nature of the program and the collection of personal information.

In sum, I conclude that the current notice of collection being provided to tenants does not satisfy the notice requirements set out in section 29(2) of the *Act*.

Was the disclosure of the “personal information” by the Police to Peel Living in accordance with section 32 of the *Act*?

Section 32 of the *Act* imposes a basic prohibition on the disclosure of personal information but states that there are a number of exceptions under which the disclosure of personal information may take place.

In this case, having reviewed section 32, as well as the materials provided by the Police and Peel Living, I am of the view that there are three exceptions, which are excerpted below, that could have possible application to justify the disclosure of personal information that is taking place.

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

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

...

(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;

...

(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;

....

Section 32(b) provides that an institution may disclose personal information where the person to whom the information relates has “identified the information in particular and consented to its disclosure”. In this case, the Addendum that is required to be signed by all new tenants contains the following statement:

Should incidents occur resulting in police involvement, I agree to allow the investigating police service to release information to the Landlord. This is in accordance with the Municipal Freedom of Information and Protection of Privacy Act.

By completing the tenancy agreement, as well as the Addendum, prospective tenants agree to the terms of the Addendum, including the requirement that they agree to the release of any information by the Police to the Landlord.

In my view, the above passage in the Addendum does not qualify as a true “consent” under section 32(b) of the *Act*. Because signing the Addendum is a mandatory component of the application process, applicants for a tenancy have no choice but to sign the form, as their application would otherwise be turned down. Agreeing to the terms of the Crime Free Program is a mandatory component of living in a Peel Living residence, and tenants do not have a choice as to whether or not to participate. Accordingly, I am of the view that the act of signing the Addendum is not completely voluntary and therefore does not constitute consent under section 32(b) of the *Act*.

The Police have stated that the disclosure is in accordance with section 32(f)(ii) of the *Act*, which permits the disclosure of personal information by a law enforcement agency to another law enforcement agency.

In support of this position, the Police made reference to the definition of “law enforcement” in section 2(1) of the *Act*, which states, in part:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b)

The Police have taken the position that Peel Living qualifies as a “law enforcement agency” and stated:

Peel Living is a local housing corporation and as such has the exclusive authority under the *Tenant Protection Act* and now the *Residential Tenancies Act, 2006*, to commence proceedings to evict tenants from their facilities before a tribunal, namely the Landlord and Tenant Board. Peel Living is responsible for the safe and quiet enjoyment of the residential tenancies within its mandate and where that is at risk, may undertake an investigation that may lead to a proceeding under the legislation to evict a resident. An eviction is a form of sanction.

In sum, the position of the Police is that Peel Living is engaged in investigations or inspections that could lead to proceedings in a court or tribunal, which means that it is engaged in “law enforcement” within the meaning set out in section 2(1) of the *Act*, and that it is therefore a law enforcement agency. I do not agree.

In my view, while it is arguable that Peel Living may be engaged in activity that falls within the definition of “law enforcement” under section 2(1) of the *Act*, this fact does not make Peel Living a “law enforcement agency” as described under section 32(f)(ii) of the *Act*. In order to qualify as a “law enforcement agency” an entity would have to be engaged in law enforcement as a primary function. [See, for example, I95-040P, where the IPC determined that a store’s security service was not a “law enforcement agency”]. In this case, the primary function of Peel Living is that of a residential landlord and not a law enforcement agency. Accordingly, I conclude that the disclosure of occurrence information by the Police to Peel Living does not qualify as a disclosure “to another law enforcement agency in Canada” within the meaning of section 32(f)(ii) of the *Act*.

Section 32(c) of the *Act* permits the disclosure of personal information “for the purpose for which it was obtained or compiled or for a consistent purpose”. In order for this provision to

apply, I must consider the original purpose of the collection, and determine whether the disclosure that took place was for that original purpose, or for a purpose that was consistent with the original purpose. During the course of their duties, the Police collect a wide variety of personal information for law enforcement purposes, and this collection of personal information is permissible under the *Act*. What is at issue in this privacy complaint investigation is the disclosure of personal information to Peel Living.

In this case, the information contained on the Occurrence List was collected by the Police while responding to incidents taking place on Peel Living property. Broadly speaking, the original purpose of the collection of the personal information may be characterized as being for the purpose of “policing”. As I have already concluded above, Peel Living is **not** a law enforcement agency. Therefore, the disclosure of Occurrence List information by the Police to Peel Living cannot be characterized as having been for the original purpose of the collection.

In determining whether the disclosure can be said to have been for a “consistent purpose” it is helpful to refer to section 33 of the *Act*, which states:

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.

This provision provides guidance in determining whether a disclosure can be said to have taken place for a “consistent purpose” under section 32(c) of the *Act* and states that a disclosure can only be considered to be a “consistent purpose” in circumstances where the affected individual would have expected the disclosure to have taken place.

In terms of individuals’ expectations, in this case, one factor that must be considered is the existence of the Addendum, which is required to be signed by all new tenants and expresses the fact that there will be a sharing of information between the Police and Peel Living.

While the existence of the Addendum may affect some tenants’ reasonable expectations, it is notable that it is only provided to new tenants, rather than existing tenants. As discussed above, Peel Living is not providing a general notice of collection to all tenants that specifically relates to the provision of occurrence information by the Police to Peel Living.

Aside from the issue of notice, I am also of the view that the type of information contained in the Occurrence Lists is not the type of information that tenants would reasonably expect to have disclosed by the police. While it is arguable that tenants would expect that serious incidents, including instances where charges have been laid by the police would be reported, it would not be reasonably expected by tenants that all calls involving the police would be reported. Accordingly, I am not satisfied that section 32(c) applies to permit the disclosure of all of the information that is currently taking place.

Based on the above, I conclude that the current disclosure of all of the information contained on the Occurrence Lists does not constitute a permissible disclosure of personal information under the *Act*.

In what follows, as discussed above, I will be recommending that the Police limit the extent of the information that is provided regarding police calls to Peel Living. Specifically, I will be recommending the development of criteria to limit the information that may be disclosed to calls regarding serious matters that affect tenants' reasonable enjoyment of the residence. These criteria may include calls resulting in criminal charges and/or calls relating to other matters involving substantial interference with the reasonable enjoyment of the residential complex or the interference with another lawful right, privilege or interest of the landlord or another tenant.

These criteria should be provided to the IPC prior to adoption.

CONCLUSION:

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

1. The information in question qualifies as "personal information" under section 2(1) of the *Act*.
2. The collection of the personal information by Peel Living was not in accordance with section 28(2) of the *Act*.
3. Notice of collection by Peel Living was not provided in accordance with section 29(2) of the *Act*.
4. The disclosure of the personal information by the Police was not in accordance with section 32 of the *Act*.

RECOMMENDATIONS:

1. That Peel Living and the Police develop criteria to determine which police calls should be reported to Peel Living. In developing the criteria, the institutions should be mindful of the "necessity condition" for each item or class of personal information that is to be collected. This criteria should include those incidents that result in criminal charges and calls relating to other matters that might result in substantial interference with the reasonable enjoyment of the residential complex or the interference with another lawful right, privilege or interest of the landlord or another tenant. These criteria should be provided to the IPC for review prior to adoption.
2. That the Police take steps to limit the personal information that is provided to Peel Living in keeping with the criteria referenced above.

3. That Peel Living amend its Notice of Collection to comply with the requirements of section 29(2) of the *Act*. The notice should specifically state that information pertaining to certain police calls may be provided to the Police.
4. That Peel Living take steps to ensure that the revised Notice of Collection is provided to all tenants.
5. That Peel Living send a letter to each tenant explaining the nature of the program and the collection of the personal information.

By **January 12, 2009**, the institution should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Original signed By: _____

Mark Ratner
Investigator

October 10, 2008