



Information and Privacy
Commissioner/Ontario

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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC09-56

City of Vaughan



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/Télé: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

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PRIVACY COMPLAINT NO. **MC09-56**

INVESTIGATOR: **Mark Ratner**

INSTITUTION: **City of Vaughan**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner (IPC) received a privacy complaint under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from an individual (the complainant) relating to a report issued by the Integrity Commissioner for the City of Vaughan (the City).

The report was titled *Report on Complaint of Violation of Code of Conduct for Members of Council* (the Report), and it addressed a complaint that the complainant in this privacy complaint had filed with the Integrity Commissioner concerning the conduct of a member of City Council. The complainant stated that the Integrity Commissioner had inappropriately disclosed her personal information in the Report, which was posted on the City's website. The complainant also expressed concerns that the Integrity Commissioner had not followed the procedures governing complaints made to her office.

Upon receiving the complaint, the IPC opened privacy complaint file MC09-56.

Background Information

The following includes information provided by the complainant, the City, the Integrity Commissioner, as well as information obtained from the City's website.

In September, 2008, the predecessor to the current Integrity Commissioner received a complaint from the complainant concerning the conduct of a member of the City Council. The complainant had previously written a letter to the City Council raising similar issues, and these issues were being investigated under a separate process governed by Council's Audit and Operational Review Committee (AORC). Consequently, the former Integrity Commissioner decided to suspend his review of the complaint, pending the outcome of the AORC investigation.

The AORC then decided to retain an external auditor to investigate the matter. The external auditor presented its Report to Council in December, 2008. A supplemental report was presented to Council in June 2009. By that time, the former Integrity Commissioner had been replaced by the current Integrity Commissioner, who decided to address the complaint originally received in September 2008.

On September 8, 2009, the Integrity Commissioner released the Report to Council's Committee of the Whole (COW).

In the Report, the Integrity Commissioner stated:

It is my position that the facts of the findings of the External Auditor's Report do not give merit to the continuation of this investigation... [I]t is my position that the substantive issues common to this complaint and the audit process have in large part, if not entirely been addressed and the Complainant should not have to wait further conclusion.

In sum, it was the Integrity Commissioner's position that the complainant's concerns had largely been addressed by the external auditor and concluded that it was not necessary to continue with the investigation. The Report described how the external auditor's reports had addressed the issues that were the subject of the complaint.

The Report contains an analysis of how City Council's *Code of Ethics for Members of Council* applied to the matters raised by the complainant, and details the history underlying the complaint.

The Report was provided to Council's Committee of the Whole (COW), and subsequently, was posted on the City's website as part of the Agenda for the September 8, 2009 COW meeting.

DISCUSSION:

The following issues were identified as arising from the investigation:

Does the record contain "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,

...

- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature,

and replies to that correspondence that would reveal the contents of the original correspondence,

- (g) the views or opinions of another individual about the individual... .

I have reviewed the Report. I note that while it does not specifically mention the name of the complainant, it does make reference to previous correspondence from the complainant related to the matter that was addressed by the AORC.

The test to determine whether a given record contains personal information is whether it is reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)]. Therefore, in this case, the appropriate question to ask is whether the complainant can be identified through the disclosure of the record in question.

With respect to this issue, the City has stated:

... the City does not believe that [the Report] contains the complainant's personal information. The complainant's name is never mentioned in [the Report]. Individuals knowledgeable of events surrounding the audit of [the Council member's] expenses may link the audit to the complainant, but that is not because of City actions. The contents of the [media] articles are not in the City's control.

I have carefully considered the position put forward by the City. I note that, in this case, the Integrity Commissioner has not mentioned the complainant by name in the Report. I am of the view that the Integrity Commissioner's practice of omitting the names of complainants in public reports is appropriate, and would, in most circumstances, entail that such reports would not contain personal information.

However, in this case, I note that media reports had identified the complainant as the author of letters that formed the basis of the original complaint addressed by the City's AORC. By referencing these media reports, an individual may be able to identify the complainant as the person that filed the complaint resulting in the Report.

Based on the circumstances of this case, it is my view that an individual, having knowledge of publicly available background facts related to this matter, would be able to identify the complainant. Accordingly, I conclude that the record contains the complainant's personal information.

Notwithstanding the above conclusion, I reiterate my view that steps taken by the Integrity Commissioner to not reference the complainant by name in the Report, in most cases, would be sufficient to entail that it would not qualify as a record containing personal information. However, it is only in the unique circumstances of this case, where the matter giving rise to the underlying complaint had been discussed in the media, and where the complainant had been personally named in these media reports, that I conclude that it is reasonable to expect that an

individual may be identified by the disclosure of the Report. As a result, in this case, and based on all of the above, I am satisfied that the Report contained personal information under section 2(1) of the *Act*.

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

There are two separate disclosures of the Report that are at issue. The first disclosure was by the Integrity Commissioner to the Committee of the Whole (COW). The second disclosure took place when the Report was made public by being posted to the City’s website as part of the agenda for the September 8, 2009 meeting of the COW.

The rules respecting the disclosure of personal information are set out at section 32 of the *Act*, which states, in part:

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;
- (d) if the disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their 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... .

In what follows, I will address both disclosures of the Report.

Disclosure to the Committee of the Whole

In materials provided to the IPC, the City, the Integrity Commissioner, as well as the complainant made reference to provisions in the *Municipal Act, 2001*, (the *Municipal Act*). Part V.1 of the *Municipal Act* sets out the powers and duties of an Integrity Commissioner for a municipality in the province of Ontario, and addresses the process through which an Integrity Commissioner may report on a matter to Council.

Sections 223.5 and 223.6(2) in Part V.1 of the *Municipal Act* are applicable to the present case. Section 223.5 states:

- (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.
- (2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or **otherwise in accordance with this Part**.
- (3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act* [emphasis added].

Section 223.5(1) of the *Municipal Act* provides that an Integrity Commissioner must preserve secrecy with respect to all matters that come to their knowledge during the course of their duties. Section 223.5(2) modifies this principle by stating that information may be disclosed as required by law in a criminal proceeding or **otherwise** in accordance with Part V.1 of the *Municipal Act*. Section 223.5(3) provides that the above provisions prevail over the *Act*.

Section 223.6(2) of the *Municipal Act* states:

If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report.

This provision provides that an Integrity Commissioner has the discretion to issue a report containing any information concerning a code of conduct violation that she feels is necessary for the purposes of the report.

Because section 223.6(2) of the *Municipal Act* is contained within Part V.1, this section is properly read in conjunction with 223.5(2), which is also contained in that Part. Section 223.5(2) provides that "information may be disclosed ... in accordance with this Part."

As noted above, section 223.6(2) provides discretionary authority to an Integrity Commissioner to disclose such matters "as in the Commissioner's opinion are necessary for the purposes of the report." Therefore, a disclosure of information in a report of an Integrity Commissioner is a disclosure in accordance with Part V.1 of the *Municipal Act*, and would therefore be permissible under section 223.5(2), despite the limitation in section 223.5(1).

I will now consider how this analysis impacts the disclosure provisions of the *Act*.

Section 223.5(3) of the *Municipal Act* states that that section prevails over the *Act*. As a result, the combined effect of sections 223.5(2) and 223.6(2) of the *Municipal Act* are such that they prevail over the disclosure provisions in the *Act*. In sum, any restrictions on disclosure under

section 32 of the *Act* are superseded by the Integrity Commissioner's discretion to disclose information pursuant to 223.6(2) of the *Municipal Act*.

Accordingly, I conclude that the disclosure of personal information in the Report to the COW was in accordance with the *Municipal Act* and was not subject to section 32 of the *Act*.

Disclosure on City's website as part of the agenda for the COW meeting on September 8, 2009

The Report was an item listed on the agenda for the September 8, 2009 meeting of the City's COW, and the agenda contains a link to an online version of the Report. The posting of the Report on the City's website constitutes a disclosure of personal information under the *Act*.

In order to determine whether this disclosure was in accordance with the *Act*, it is necessary to consider the wording of section 32 of the *Act*, which is reproduced above.

Section 32 of the *Act* contains a general prohibition to the disclosure of personal information that is subject to the exceptions set out in that section. In the circumstances of this case, the relevant provision of section 32 to consider is section 32(c) of the *Act*, which permits the disclosure of personal information by an institution "for the purpose for which it was obtained or compiled or for a consistent purpose."

Therefore, it is necessary to first identify the purpose for which the personal information was obtained or compiled. In this case, the personal information in the Report was obtained by the COW, a committee of Council so that it could consider the content of the Report, which addressed a complaint made to the Integrity Commissioner.

As indicated above, the process governing the report to a committee of Council is addressed in Part V.1 of the *Municipal Act*, which is titled "Accountability and Transparency." Section 223.6(2) of the *Municipal Act* describes the circumstances where a report may be provided to council. On this basis, I conclude the COW obtained the Report for the purpose of enhancing municipal accountability and transparency in accordance with Part V.1 of the *Municipal Act*.

The disclosure in question was a disclosure of the Report on the City's website. By disclosing the Report in this manner, the public had access to information about the Integrity Commissioner's response to a complaint. By publishing the Report in this way, the City furthered accountability and transparency.

Based on the above, I am satisfied that the Report was disclosed for the same purpose for which it was obtained or compiled, namely to enhance municipal transparency and accountability. I therefore conclude that the disclosure in question was in accordance with section 32(c) of the *Act*.

In reaching this conclusion, I note that the Integrity Commissioner took steps to disclose as little information as possible about the complainant in the Report. In the circumstances of this case, it would not have been possible to report properly on the complaint without mentioning the

underlying history of the complaint, which combined with information already in the public arena, had the effect of the possible identification of the complainant.

As noted above, as a general rule, I am of the view that removing information that could identify complainants in public reports, as the Integrity Commissioner did, is a prudent practice, and, in most circumstances, would entail that the publication of reports would not result in the disclosure of personal information.

Procedural Issues Raised by the complainant

In the letter of complaint to the IPC, the complainant raised concerns regarding the process followed by the Integrity Commissioner in deciding to terminate the investigation of her complaint.

Questions relating to the Integrity Commissioner's processes and procedures are outside the jurisdiction of this office, and accordingly, such issues will not be addressed in this Report.

CONCLUSION:

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

1. The information contained in the Report qualifies as "personal information" under section 2(1) of the *Act*.
2. The disclosure of the Report to the COW was not subject to the section 32 disclosure provision of the *Act*.
3. The disclosure of the Report on the City's website was in accordance with section 32 of the *Act*.

Mark Ratner
Investigator

June 9, 2010