



Information and Privacy
Commissioner/Ontario

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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC09-24

City of Woodstock



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

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PRIVACY COMPLAINT NO. **MC09-24**

INVESTIGATOR: **Mark Ratner**

INSTITUTION: **City of Woodstock**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (IPC) received a complaint from two individuals regarding the City of Woodstock (the City). The individuals were concerned that the City had improperly disclosed their personal information to an individual. I will hereinafter refer to the two individuals collectively and individually as the complainants.

The complainants found garbage that did not belong to them on their property. Later, two by-law enforcement officers came to look through the garbage. As a result of information found in the garbage, the by-law enforcement officers were able to connect it to an individual that was the owner of the garbage (the garbage owner). One of the by-law enforcement officers contacted the garbage owner and provided the complainants' address as the location of the garbage.

The complainants objected to the disclosure of their address to the garbage owner and filed a complaint with the IPC. The IPC commenced a privacy investigation to determine whether the City's treatment of their personal information was in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the Act).

Background Information

The complainants and the City provided the following background information on this matter to the IPC.

The complainants found garbage that did not belong to them on their property. Two by-law enforcement officers attended at the complainants' property and proceeded to examine garbage found in their rear yard. As a result of information found in the garbage, they were able to identify the garbage owner.

The City stated that, at that time, a by-law enforcement officer advised the complainants that, in accordance with standard protocol, the City would contact the garbage owner to determine the reason why the garbage was found on their property. The City further stated that the complainants had requested that the garbage owner be charged, and made to clean up the waste.

The complainants stated that, upon examining the garbage, they noticed disturbing drawings of a pornographic nature, and contacted the police.

The complainants further stated that, since the garbage was still there a few days later, they sent a letter to the Mayor of the City requesting its removal. Later that day, they spoke to a by-law enforcement officer, who advised the garbage owner had been contacted, and that he had agreed to remove the garbage. The by-law enforcement officer advised that the garbage owner had been provided with the complainants' address.

At this point, the complainants advised the by-law enforcement officer that they did not want the garbage owner to come to their home as they believed that he was under investigation by the police in relation to the disturbing drawings.

Later that evening, the garbage owner came to the complainants' home, and requested permission to enter their backyard in order to clean up the garbage.

The City explained that the by-law enforcement officer had intended to contact the garbage owner to advise of the complainants' wishes but did not have the opportunity to do so before he attended at the complainants' home.

The complainants were concerned that the disclosure of their address to the garbage owner was inappropriate, and in violation of the *Act*.

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 privacy complaint is the complainants' address. 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,

...

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

...

(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... [emphasis added].

The City has taken the position that the address does not qualify as personal information:

The address of the location of the waste was given out but no individual was linked to this information and no names were given out.

The complainants, on the other hand, believe that their address does qualify as "personal information".

In order for information to qualify as personal information, it must be 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, an address will only be considered to be "personal information" if it can be connected to an identifiable individual.

In Order PO-2265 former Assistant Commissioner Tom Mitchinson discussed the circumstances under which an address would qualify as "personal information" and stated:

It is well established that an individual's address qualifies as "personal information" under paragraph (d) of section 2(1) of the *Act*, as long as the individual residing at the address is identifiable. However, previous orders have found that if an address is not referable to an identifiable individual it does not constitute personal information for the purposes of the *Act*. For example, in Order PO-2191, Adjudicator Frank DeVries found that an address contained on an occurrence report for a motor vehicle collision was not "personal information". He determined that the address was simply a reference point used by the Police to identify where the collision took place, and that there was no indication that the address was referable to an identifiable individual or that any individual at that address was in any way involved in the incident.

In sum, an individual's address will be only qualify as "personal information" if it is referable to an identifiable individual.

The City has acknowledged that a by-law enforcement officer provided the garbage owner with the complainants' address. The City has further stated that it informed the garbage owner that he would be considered to be trespassing if he simply retrieved the garbage without first obtaining the complainants' permission. The garbage owner therefore, attended at the complainants' property and requested permission from the complainants to enter their backyard in order to clean up the garbage.

In the circumstances of this case, I am satisfied that the by-law enforcement officer's disclosure of the complainants' address to the owner of the garbage gave rise to a reasonable likelihood of

their identification. The address was provided to the garbage owner with the understanding that, with the complainants' permission, he may go to their home and clean up the garbage.

Because a reasonable likelihood of identification of an individual (or in this case, individuals) resulted from the provision of the address, I am satisfied that the address qualifies as "personal information" under section 2(1) of the *Act*.

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

The disclosure of personal information in question is the disclosure of the complainants' address by the City's by-law enforcement officer to the garbage owner.

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

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... .

Section 32 contains a general prohibition on the disclosure of personal information that is subject to the exceptions listed in that section. In order to determine whether a given disclosure of personal information is permitted under the *Act*, it is necessary to consider whether any of the exceptions listed in section 32 apply to make the disclosure permissible.

In this case, the exception that is most applicable is section 32(c), which states that personal information may be disclosed for the purpose for which it was obtained or compiled or for a consistent purpose. In order to determine whether section 32(c) applies to a given disclosure of personal information, it is first necessary to determine the original purpose for which the information was obtained or compiled.

The information in question is the complainants' address. The address was obtained by a City by-law enforcement officer during the course of an investigation into a potential by-law violation on the complainants' property. Article 4.1 of Chapter 771 of the City of Woodstock's *Municipal Code* states that:

No person shall throw, place or deposit refuse or debris on private property without the written authority of the owner or occupant of the property.

Therefore, I conclude that the purpose of the collection of the personal information was to investigate a potential by-law investigation.

Having determined the purpose for which the information was collected, it is necessary to determine whether the disclosure of the information took place either for the original purpose of the collection or for a consistent purpose.

In this case, the address was disclosed to the garbage owner for the purpose of facilitating a clean up of the garbage. Because this purpose is different from the purpose for which the information was collected, (investigating a potential by-law violation) I conclude that the disclosure did not take place for the original purpose for which the information was collected.

I will now consider whether the disclosure took place for a consistent purpose. Section 33 of the *Act* provides clarification on the definition of a “consistent purpose” and 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.

Applying this provision to the circumstances of this complaint, I note that the disclosure of the complainants’ address to the garbage owner could only be considered a consistent purpose if the complainants had reasonably expected the disclosure to take place.

According to information supplied by the City, the by-law enforcement officer explained to the complainants during the investigation into the by-law violation that it was “standard protocol to contact the owner of the garbage to determine the reason why the garbage was where it was found”.

Based on this information, I conclude that the complainants should have reasonably expected the disclosure of their address to the garbage owner.

Having considered the information provided by both parties, I am satisfied that there is a rational connection between the investigation of a potential by-law violation and the attempt to resolve the issue by, as in this case, facilitating the potential clean-up of waste. Accordingly, I am satisfied that the disclosure of the address (to facilitate potential clean-up and resolve the potential by-law violation) was consistent with the purpose of the collection (to investigate the potential by-law violation).

Based on all of the above, I am therefore satisfied that the disclosure was in accordance with section 32(c) of the *Act*.

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 disclosure of the personal information to the garbage owner was in accordance with section 32 of the *Act*.

POSTSCRIPT

In this complaint, the City has taken the position that the disclosure of the complainants' address in this instance did not constitute a violation of the *Act*. The City has advised the IPC that it has changed its procedures with respect to the enforcement of Chapter 771 of the *Municipal Code*, which relates to garbage dumping.

Effective September 21, 2009, where garbage is found on a property, the by-law enforcement officer will no longer contact the owner of the garbage in an effort to co-ordinate the removal of the garbage for the property owner. Under the new procedure, the only time a by-law enforcement officer will become involved in an improper dumping matter is if a property owner wishes to lay charges, and if the property owner has provided evidence sufficient to obtain a conviction under the applicable by-law. In such a case, the by-law enforcement officer will consider whether it would be appropriate to lay charges.

Although I have concluded that the disclosure of the complainants' address to the garbage owner in this instance did not constitute a violation of the *Act*, I am of the view that the procedural changes that have been adopted by the City are sensible, and will preclude the risk of similar complaints arising in the future.

Original Signed By: _____

Mark Ratner
Investigator

July 2, 2010 _____