



Information and Privacy  
Commissioner/Ontario

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

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# PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC10-46

Municipality of Chatham-Kent

September 16, 2011

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# PRIVACY COMPLAINT REPORT

**PRIVACY COMPLAINT NO.**                      **MC10-46**

**INVESTIGATOR:**                              **Jeffrey Cutler**

**INSTITUTION:**                              **Municipality of Chatham-Kent**

## **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 regarding Chatham-Kent Energy (CKE) and the Municipality of Chatham-Kent (the Municipality).

The Complainant alleged the Municipality improperly collected the Complainant's personal information. In addition, the Complainant alleged that the Municipality improperly disclosed his personal information via an anonymous letter that he claims were sent to his family members and his former employer.

As the complaint related to the activities of the CKE and the Municipality, which are separate institutions under the *Act*, this office decided to open two files to process the complaint. This file is referred to as Privacy Complaint MC10-46 and was opened to deal with the aspects of the complaint that relate to the activities of the Municipality. Privacy Complaint MC10-55 will deal with the aspects of the complaint that relate to CKE.

## **BACKGROUND:**

The following background information was provided by the Complainant and Municipality.

The Complainant initially filed a freedom of information (FOI) request with the Municipality under the *Act* on October 22, 2007. Among the information sought in the FOI request was information related to the Complainant's utilities account with CKE.

On October 31, 2007, the FOI Coordinator for the Municipality contacted the Complainant via email and informed him that because the request concerned information in the custody of CKE, the request had been forwarded to that organization.

On November 6, 2007, the Chief Financial and Regulatory Officer with CKE issued a decision letter in response to the Complainant's FOI request which was sent to the Complainant by email. The email included attachments, specifically a letter to the Complainant and an appendix that included details of the Complainant's utilities account in CKE's customer information system. The email was copied to the Chief Executive Officer of CKE, as well as the FOI Coordinator for the Municipality and the Mayor.

The decision letter informed the Complainant that some of the information requested was publicly available on CKE's website. Additional responsive information would not be disclosed at that time because, according to CKE, the requested information was not readily available, and would require additional staff resources to obtain it. In its decision letter, CKE added that it would compile the information provided the Complainant paid a fee of \$950 in advance, and noted that if it took fewer resources to respond to the request, then part of this money would be refunded to the Complainant. CKE states that the fee was never paid and this information was not released to the Complainant.

With regards to the Complainant's account, the decision letter included comments that the complainant asserts are superfluous and derogatory.

The Complainant asserted in his privacy complaint that on August 23, 2010, a family member received an anonymous letter in the mail. The Complainant also asserts that on August 26, 2010 another family member received a copy of the same letter. Included in the letter was information about the Complainant's CKE utility account. The Complaint also asserted that there are grounds to believe that a similar letter was sent to his then employer. The Complainant expressed that the source for the information in this letter is from the documents provided to the Mayor and/or CEO of CKE as part of the FOI request process.

As noted above, the Complainant filed a complaint with this office against the Municipality and CKE.

## **DISCUSSION:**

### **Preliminary Matters**

As set out above, the Complainant alleges that an anonymous letter was sent to two family members. He also alleges that another anonymous letter was sent to his former employer. Before I turn to the issues before me, I will address the Complainant's allegation that a letter was sent from an anonymous source to his former employer. Here the Complainant has not provided me with sufficient evidence or information to support a finding that such a letter was ever written and delivered to his former employer, and the Municipality and CKE have denied that such a letter was ever written or sent by any of its officers or employees.

I also considered the allegation that an anonymous letter was sent to two family members. I have reviewed the anonymous letter, and I am not able to determine who the author was or where the

information may have originated. Both the Municipality and CKE have denied that such a letter was ever written or sent by any of their officers or employees.

While I am sensitive to the concerns of the Complainant regarding the contents of this letter, on the evidence before me, I am not able to make a finding that the Municipality disclosed the Complainant's personal information to the recipients of this letter. Accordingly, I am not able to make a finding in this report that there has been a breach of the *Act*. For these reasons, I will not discuss it further in this report.

The following issues were identified as arising from the investigation:

**Do the November 6, 2007 email and the attachments contain "personal information" as defined in section 2(1) of the *Act*?**

The information at issue is the email dated November 6, 2007 and the attached decision letter and appendix with the utility account details. The issue I must initially determine is whether those records contain personal information within the meaning of the *Act*.

Section 2(1) of the *Act* 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 [emphasis added];
- (g) the views or opinions of another individual about 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.

In this case, the Municipality does not dispute that the November 6, 2007 email, and its attachments, from CKE contain information which qualifies as the Complainant's personal information.

I have reviewed the records, and I am satisfied that the information in question qualifies as the Complainant's personal information.

**Was the October 22, 2007 FOI request properly transferred by the Municipality to CKE in accordance with the *Act*?**

As noted above, in an email from the FOI Coordinator for the Municipality dated October 31, 2007, the Complainant was given notice that the Municipality had determined that CKE had

custody of the requested information and therefore the Complainant's FOI request was being forwarded to CKE. Although the email cited section 25(2) of the *Act*, I am satisfied that this was a clerical error, and that it intended to refer to section 18(2).

In the event that an institution does not have custody or control of records responsive to an FOI request, section 18(2) of the *Act* requires it to transfer the request to the institution with custody and control within fifteen days. The section states:

The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control shall make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

- (a) forward the request to the other institution; and
- (b) give written notice to the person who made the request that it has been forwarded to the other institution.

By forwarding the FOI request to CKE and providing notice to the Complainant of the transfer, I find that the Municipality complied with the *Act* and met its obligations under section 18(2).

**Was the collection of the “personal information” in accordance with section 28(2) of the *Act*?**

Section 28(2) of the *Act* creates a prohibition against the collection of personal information unless the collection falls within the stated exceptions. The Complainant alleges that the collection of his personal information by the Municipality was contrary to section 28(2).

Section 28(2) 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.

In response to this allegation, the Municipality denied that it collected the Complainant's personal information. It states that CKE provided the personal information to the Municipality on its own initiative and on an unsolicited basis.

This position is confirmed by the CKE. CKE stated that it disclosed the email, decision letter and the attachments to the Municipality on its own initiative. It explained that the information was provided to the Municipality because it believed that the Municipality had a right to receive the information given that it had initially received the FOI request and had forwarded it to CKE. In other words, because the Municipality had received the FOI request, CKE mistakenly thought that the *Act* required it to copy the Municipality on the decision.

I accept the position of the Municipality and CKE on this issue and find that the records were provided to the Municipality by CKE on an unsolicited basis.

In order to determine the applicability of section 28(2), it is first necessary to determine whether the records in question were collected under the *Act*. Previous reports of this office have found that the receipt of unsolicited correspondence and/or records does not qualify as a collection of those records [See PC08-31]. In Report PC08-39, it was found that the term “collect” is intended to be interpreted narrowly so as not to apply to situations such as this where correspondence or records are sent to a party without solicitation.

I agree with and will adopt this same approach. Having found that the records were received by the Municipality without solicitation, I am satisfied that they were not collected by the Municipality as that term is used in section 28(2) of the *Act*. Therefore, section 28(2) does not apply.

#### **CONCLUSION:**

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

1. The records in question, the November 6, 2007 email and attachments, contain information that qualifies as “personal information” under section 2(1) of the *Act*.
2. The October 22, 2007 FOI request was appropriately transferred by the Municipality to CKE in accordance with section 18(2) of the *Act*
3. The records at issue were not collected by the Municipality under section 28(2) of the *Act*.
4. There is insufficient evidence to establish that the personal information in the anonymous letter referred to by the Complainant was inappropriately disclosed by the Municipality.

Even though I determined that the records at issue were not collected by the Municipality under section 28(2) of the *Act*, in Report MC10-55 I found that the records should not have been disclosed to the Municipality. For that reason I have asked the Municipality to destroy the records in its possession.

Information about the disclosure can be found in Report MC10-55.

#### **RECOMMENDATION:**

1. The Municipality should fully delete all electronic copies of the November 6, 2007 email and attachments and securely shred any paper copies in its possession.

In a letter dated August 3, 2011, the institution provided the Office of the Information and Privacy Commissioner with a statement that they have complied with the above recommendation.

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Jeffrey Cutler  
Investigator

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September 16, 2011