
INVESTIGATION REPORT
INVESTIGATION I95-004M
A TOWN
July 13, 1995

INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a municipal town (the Town).

The complainant was suspended from his position as the Town's chief of police. During his suspension, the complainant applied for employment with a city (the City). When making this application to the City, the complainant did not provide anyone from the Town as a reference, and the Town was not aware that he had made such an application. However, according to the complainant, the City contacted the Town and the Town disclosed his salary and the fact that he had been suspended as chief of police.

The complainant was concerned that the Town's disclosure of his salary and suspension to the City, without his consent, was contrary to the Municipal Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the specific personal information disclosed by the Town?
- (C) Did section 27 of the Act apply to the complainant's personal information that he had been suspended?
- (D) Was the complainant's personal information that he had been suspended disclosed in compliance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states that personal information "means recorded information about an identifiable individual".

The information in question was the complainant's salary and the fact that he had been suspended as chief of police by the Town. While the complainant's name was not specifically mentioned in the telephone conversation between the Town and the City, he was referred to as the "chief of police" and was, therefore, an identifiable individual.

It is our view that the information in question met the requirements of the definition of personal information in section 2(1) of the Act.

Conclusion: The information in question was personal information as defined in section 2(1) of the Act.

Issue B: Was the specific personal information disclosed by the Town?

The complainant stated that his actual salary and the fact that he was suspended had been disclosed by the Town.

Both the City and the Town agreed that the Town had disclosed the fact that the complainant had been suspended. The Town had advised the City that "no negotiation had been undertaken recently due to the current Chief's suspension".

However, with respect to the complainant's salary information, the Town stated that, when the City requested information regarding the salary "Classes" for the chief of police, the Town advised the City that it did not understand the request for "Classes", and that "the Chief's salary was in a specified range and that there were four classes of constables included in the range of salaries quoted...from mid-forty to mid fifty-five thousand range."

The Town maintained that it did not tell the City "specific dollar amounts", nor did it refer to the complainant or to his salary directly; "at no time was [the complainant's] name or salary mentioned during the conversation in question."

The City advised us that the Town stated that the Town did not have ranges of salaries. The City said that it was not given a salary range nor was it given the complainant's actual salary.

Both the City and the Town agreed that the complainant's **actual** salary had not been disclosed. However, based upon the conflicting information provided to us by the Town and the City, we are unable to determine whether the complainant's salary **range** was disclosed by the Town.

Conclusion: The complainant's suspension was disclosed by the Town. The complainant's actual salary was not disclosed by the Town.

Issue C: Did section 27 of the Act apply to the complainant's personal information that he had been suspended?

The Town stated that the fact that the complainant was suspended as chief of police was public knowledge. It stated that a resolution regarding the suspension was passed at an open meeting of the Police Services Board for the Town and that the local newspapers had published articles related to the suspension.

Therefore, we have examined whether section 27 of the Act was applicable to the personal information disclosed in this case. Section 27 of the Act states that:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

The Town provided a copy of minutes from a meeting of the Town's Police Services Board. These minutes included the resolution that the complainant's suspension be continued indefinitely at the discretion of the Police Services Board. The Town stated that the resolution was made at an open public meeting.

Section 27 states that the privacy provisions of the Act do not apply to personal information that **is maintained for the purpose of creating a record that is available to the general public**. While the general public may have been aware that the complainant had been suspended as chief of police, and, while that information appeared in the Police Services Board's minutes and was raised at a public meeting, the fact that the complainant had been suspended was not information that the Town was specifically maintaining "for the purpose of creating a record available to the general public". Accordingly, we do not consider this information to have been "public" within the meaning of section 27 of the Act. In our view, section 27 of the Act did not apply in the circumstances of this case.

Conclusion: Section 27 of the Act was not applicable.

Issue D: Was the complainant's personal information that he had been suspended disclosed in compliance with section 32 of the Act?

Under the Act, personal information cannot be disclosed except in the specific circumstances outlined in section 32.

The Town submitted that, "regarding the Chief's suspension, as resolutions were passed at open public meetings of the Police Services Board, we are relying on Section 63 regarding oral requests and access to public information." Since the Town is a "municipal institution", the comparable section to section 63 under the municipal Act is section 50. Section 50 of the Act provides that:

(1) If a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

(2) This Act shall not be applied to preclude access to information that is **not personal information** and to which access by the public was available by statute, custom or practice immediately before the 1st day of January, 1991.(emphasis added)

It is our view that section 50(1) must be read in conjunction with Part I of the Act and section 32 of the Act in order to determine if "a head may give access to information under this Act". Thus, where a head may give access to information under Part I of the Act, section 32(a) would apply. Section 32(a) states that:

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

(a) in accordance with Part I;

In past compliance investigations, we have held the view that the section 32(a) exception to the section 32 prohibition against the disclosure of personal information only applies in the context of a request by an individual, made under Part I of the Act, for personal information relating to another individual. Given that section 50(1) does not refer to "personal information", and bearing in mind that one of the purposes of the Act as set out in section 1(b) is to protect the privacy of individuals with respect to personal information, it is our view that section 50(1) should be interpreted narrowly. Therefore, in this case, since the disclosure did not involve an access request under Part I of the Act, it is our view that section 32(a) of the Act does not apply and that section 50(1) of the Act does not assist in determining whether the disclosure was in compliance with the Act.

With respect to section 50(2) of the Act, this section specifically refers to information that is not "personal information". Since we have already determined that the information in question is "personal information", it is our view that this section does not apply.

We have reviewed the remaining provisions of section 32 of the Act and it is our view that none were applicable in the circumstances of this case.

Conclusion: The disclosure of the personal information was not in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

The information in question was personal information as defined in section 2(1) of the Act.

The complainant's suspension was disclosed by the Town. The complainant's actual salary was not disclosed by the Town.

Section 27 of the Act was not applicable.

The disclosure of the personal information was not in compliance with section 32 of the Act.

RECOMMENDATIONS

We recommend to the Town that:

(1) it ensure that staff are reminded of the limited circumstances under which personal information may be disclosed in compliance with section 32 of the Act, for example, by sending a memorandum to all staff outlining, a) the type of information that would be considered "personal information" as defined in section 2(1) of the Act; and b) the disclosure provisions of section 32 of the Act.

(2) it develop a policy addressing the circumstances for the external release of employees' "personal information". For example, such a policy might state that "personal information" should not be released unless the employee first consents to the release of the **particular** information, or the release of the information is consistent with the purpose for which it was collected, or the release was required by law.

Within six months of receiving this report, the Town should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Susan Anthistle, Compliance Review Officer
July 13, 1995
