



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

INVESTIGATION REPORT

INVESTIGATION I95-091M

A CITY

February 2, 1996



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named City.

By July 8, 1994, the complainant had submitted eight requests for information under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the City, all dealing with the same subject. And, prior to making requests for this information under the Act, the complainant had requested the information, on numerous occasions, by approaching various City staff directly. The complainant had also written a number of letters to the Mayor, and had attended various meetings of Council and its committees. According to the City, the front line staff who had provided service to the complainant had become frustrated dealing with him, as he had become extremely demanding.

During a meeting on July 19, 1994, the City's Mayor instructed the complainant to make contact with, and to submit all correspondence including requests for information under the Act to her office, instead of to various City staff including the Freedom of Information and Privacy Co-ordinator (the Co-ordinator), and "she would be responsible for the distribution." The Mayor had thus instructed the complainant because she was concerned about the amount of time City staff was spending on his visits and voluminous requests, especially in light of staff reductions and increased volume of City business.

The requirement to submit his requests to the Mayor ended in October 1994, when both the complainant and the Mayor ran for the Mayor's office in the municipal election. Between July 19, 1994 and October 1994, the complainant submitted seven access requests to the Mayor's office, although he had attempted, without success, to submit them to the Co-ordinator.

The complainant claimed that the City had violated his privacy when it required him to submit his access requests to the Mayor's office, instead of to the Co-ordinator.

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) Did the City comply with section 3(2) of Ontario Regulation 823, made under 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, 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.

The complainant provided us with the front page of each of the seven access requests that he had filed with the City between July 19, 1994 and October 1994. They contained his name, address, the fact that he was a Canadian citizen, and that he was requesting certain general records.

It is our view that the information in the complainant's access requests met the requirements of paragraphs (d) and (h) 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: Did the City comply with section 3(2) of Ontario Regulation 823, made under the Act?

The Co-ordinator submitted the following on behalf of the City, with regard to the Mayor requiring the complainant to submit his access requests to her office:

It is true that the City Clerk is the head and that I am the Freedom of Information Coordinator, however, even if the powers or duties are delegated, it is clearly the intent of the legislation that the head remains accountable for actions taken and decisions made under the Act. It is our opinion, therefore, that the Mayor exercised her rights under the Act. It is also our opinion that the decision did not represent a violation of the named complainant's privacy.

It would appear, therefore, that the City's view was that the powers and duties of the "head", for the purposes of the Act, had been delegated from the Mayor to the City Clerk. The complainant, however, provided us with a copy of By-law 53-91, dated February 11, 1991, which states:

... the Council of The Corporation of the named City ENACTS as follows:

1. That the City Clerk is hereby delegated the powers and duties of the Head of The Corporation of the named City prescribed in the Municipal Freedom and Protection of Personal Privacy Act 1989 [sic].

Therefore, it is evident that the duties and powers of the head had been delegated from the Council to the City Clerk, and that the Mayor was never the head for the purposes of the Act. That the duties and powers of the head had been delegated from the Council is in keeping with sections 3(1) and 3(3)(a) of the Act, which state:

(1) The members of the council of a municipal corporation may by by-law designate from among themselves an individual or a committee of the council to act as head of the municipal corporation for the purposes of this Act.

...

- (3) If no person is designated as head under this section, the head shall be,
- (a) the council, in the case of a municipal corporation;

Section 3(2) of Ontario Regulation 823 under the Act states:

Every head shall ensure that only those individuals who need a record for the performance of their duties shall have access to it.

After carefully reviewing this matter, it is our view that since the City already had a process in place for handling requests for information under the Act, which did not involve the Mayor, and since the City had dealt with the complainant's first eight access requests through this process, the Mayor did not **need** the complainant's requests, which he had made between July 19, 1994 and October 1994, for the performance of her duties. It is, thus, our view that the City did not comply with section 3(2) of Ontario Regulation 823.

Conclusion: Since the Mayor did not **need** the records at issue for the performance of her duties, the City did not comply with section 3(2) of Ontario Regulation 823.

SUMMARY OF CONCLUSIONS

- The information in question was "personal information" as defined in section 2(1) of the Act.
- Since the Mayor did not **need** the records at issue for the performance of her duties, the City did not comply with section 3(2) of Ontario Regulation 823.

RECOMMENDATION

We recommend that the City take steps to ensure that only those individuals, who need the records of a request for information under the Act for the performance of their duties, have access to them.

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

Ogirinal signed by _____
Susan Anthistle
Compliance Review Officer

February 2, 1996 _____
Date
