



Information and Privacy
Commissioner/Ontario

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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-020007-1

Durham Regional Police Service



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. **MC-020007-1**

MEDIATOR: **Warren Morris**

INSTITUTION: **Durham Regional Police Service**

SUMMARY OF COMPLAINT:

The complainant, the owner of a restaurant and bar, believes the Durham Regional Police (the Police) disclosed his personal information in breach of the *Municipal Freedom of Information and Protection of Privacy Act* (the Act). The complaint is twofold. Firstly, the complainant states that the Police disclosed personal information, specifically, his name, age, street name and details of *Liquor Licence Act* charges by including this information in a release to the media, and by posting the media release on the Police website. Secondly, the complainant states that the Police disclosed details of liquor licence violation charges that had been laid against him to one of his prospective tenants.

RESULTS OF THE INVESTIGATION:

Background

Web Site – Media Release

In his letter of complaint, the complainant states that when his name was typed into an internet search engine, his personal information appeared in the form of a media release. Included with the complaint was a printout of the media release from the Police web site.

By the time this investigation was commenced, an internet search of the complainant's name did not produce any results. It appeared that the complainant's personal information was no longer posted on the Police web site. Nonetheless, the Police were contacted for their position with respect to the complaint.

In response to the complaint the Police stated that at the time the complaint was made, the Police practice was to post each media release on their web site as its own page. Consequently, upon searching with an internet search engine under an individual's name, the web page would appear. The Police indicated that since the complaint, they have launched a new and improved web site in which limits the ability to use an internet search engine to locate the media release based on information contained within it. Contemporaneous with the launch of their new web site, the Police purged several media releases from their site, including the release involving the complainant.

Conversation with Prospective Tenant

The Police acknowledged that an inspector with the Police did have a conversation with the prospective tenant in connection with the individual's application for a new liquor licence for the premises. The Police state the conversation consisted of the inspector advising the prospective tenant that a background check would be done on him to establish his relationship to the premises and that the premises were a source of ongoing problems. The Police stated that only general information regarding the property was disclosed.

The prospective tenant was then interviewed. He recalled being interested in renting the property. The prospective tenant stated that an officer identifying himself as being from the Durham Regional Police Service had visited him. He stated that the Police informed him about an incident that had occurred at the property. The Police also told him that there were problems regarding the liquor licence at the property, specifically that liquor licence violations had occurred at the property. When asked whether the Police told him anything else about the owner of the property, he stated repeatedly, that the Police said nothing about the complainant personally.

DISCUSSION:

The following issues were identified as arising from the investigation:

- 1. What information is at issue?**
- 2. Is the information "personal information" as defined in sections 2(1) of the Act?**
- 3. Was the disclosure of the "personal information" in accordance with section 32 of the Act?**

What information is at issue?

In regards to the media release, there is no dispute as to what information was at issue. As noted previously, the media release included the complainant's name, age, street name and a list of

charges. It also contained a description of the events and circumstances surrounding the charges. The release was posted to the Police website, and was also disseminated to a fax and e-mail list of several media agencies as well as some politicians such as local mayors.

With respect to the information discussed with the prospective tenant, I was provided with three slightly different versions – by the complainant, the Police and the prospective tenant – as to what information the Police provided to the prospective tenant. The Police have acknowledged that information of a general nature was provided. Based on the information provided to me by the prospective tenant, I am prepared to accept that the Police did disclose some information to the prospective tenant regarding incidents that took place at the property, including *Liquor Licence Act* violation charges that occurred at the premises.

Is the information “personal information” as defined in sections 2(1) of the Act?

Section 2(1) of the *Act* states, in part, that "personal information" means **recorded** information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, **age**, sex, sexual orientation or marital or family status of the individual,

(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,

...

(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]

Information in the Media Release and Web Posting

As noted, the media release and web posting both contained the complainant's name, age, street name, and charges laid against him under the *Liquor Licence Act*, all of which clearly qualifies as the personal information.

Conversation with the Prospective Tenant

Whether personal information was disclosed to the prospective tenant is not nearly as clear. The Police deny that this occurred, taking the position that whatever was disclosed related to the property generally and not to an identified individual. The complainant's position is that any information related to the property is inextricably related to himself as the owner of the bar/restaurant on the premises. The complainant states that information related to the property is one and the same as information about him.

In Investigation Report I94-079M, then Assistant Commissioner Ann Cavoukian reviewed Orders M-15 and M-176 prior to coming to her conclusion regarding whether a work order against a property amounted to constituting personal information of the owner. The report states:

The records at issue in M-15 were copies of work orders which had been issued by a municipality against various residential rental properties. Commissioner Tom Wright concluded that "... the municipal addresses of the properties in question as well as information concerning repairs do not constitute personal information as defined in the *Act*."

In M-176, Inquiry Officer Holly Big Canoe stated: "I find that the fact of being identified as responsible for the alleged unlawful condition of a property is 'other personal information' for the purposes of subparagraph (h) of the definition ..."

Based on the above, we concur with the Municipality that the municipal address of the complainant's property and the infractions against it did not constitute "personal information", as defined in section 2(1) of the *Act*.

However, it is also our view that the complainant's name together with the fact that he owned the property in question, that he had allegedly requested that the order for non-compliance with the zoning by-law be delayed because of his upcoming candidacy, and that he was identified as being responsible for the alleged unlawful condition of the property met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the *Act*.

...

The complainant's name together with the fact that he owned the property in question, ... and that he was identified as being responsible for the alleged unlawful condition of the property was "personal information", as defined in section 2(1) of the *Act*.

I concur with the analysis of Investigation Report I94-79M. In the present case, it is not clear that in their discussion with the prospective tenant, the Police attributed the violations and/or charges to the complainant personally, or to any other individual. Charges under the *Liquor Licence Act* can be laid against various individuals - servers, employees or patrons - not just the owner of the establishment. Consequently, the fact that *Liquor Licence Act* charges were laid at the premises does not qualify as personal information under the definition of personal information set out in the *Act*.

Conclusions

The information disclosed in the media release and web posting meets the definition of personal information as set out in the *Act*, whereas the information disclosed to the prospective tenant does not. Accordingly, I will consider whether the personal information in the media release and web posting was disclosed in accordance with section 32 of the *Act*.

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

In disclosing the complainant’s personal information by way of media release and posting on their web site, the Police rely on section 32(e) of the *Act*, as well as provisions of the *Police Services Act* and one of the regulations under it. Section 32(e) of the *Act* states:

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

...

(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;

Section 41 of the *Police Services Act* states:

(1.1) Despite any other Act, a chief of police, or a person designated by him or her for the purpose of this subsection, may disclose personal information about an individual in accordance with the regulations.

...

(1.3) Any disclosure made under subsection (1.1) shall be deemed to be in compliance with clauses 42(e) of the *Freedom of Information and Protection of Privacy Act* and 32(e) of the *Municipal Freedom of Information and Protection of Privacy Act*.

The regulation cited by the Police is entitled “Disclosure of Personal Information” (O. Reg. 265/98, as amended by O. Reg. 81/00). Section 3 of this regulation states, in part, as follows:

(1) A chief of police or his or her designate may disclose personal information, as described in subsection (2), about an individual to any person if the individual has been **charged with**, convicted or found guilty of an offence under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) or any other federal or **provincial Act**. (emphasis added)

(2) If subsection (1) applies, the following information may be disclosed:

1. The individual's name, date of birth and address.
2. The offence described in subsection (1) with which he or she has been charged or of which he or she has been convicted or found guilty and the sentence, if any, imposed for that offence.

...

The *Liquor Licence Act* is a provincial Act as described in section 3(1) of the Regulation. Section 3(2)2 permits the Police to disclose that an individual has been charged with a particular offence or offences described in section 3(1). In my view, the charge information in the media release falls within this category.

Section 3(2)1 permits the disclosure of the name, date of birth, and address of an individual charged with an offence described in section 3(1). In disclosing the name of the street on which the complainant resides and his age, instead of his street address and date of birth, the Police disclosed information that could easily be ascertained from the latter, but was in fact less privacy-invasive. In my view, the individual's name, street name and age fall within the type of information whose release is authorized by section 3(2)1.

The Regulation does not specify to whom such disclosures can be made. However section 41(1.2) of the *Police Services Act* does list the purposes for which disclosure shall be made, and purpose number 8 reads, "Keeping the public informed of the law enforcement, judicial or correction processes respecting any individual". The sending and posting of the media release appears to be consistent with purpose number 8.

Conclusions

Accordingly, based on sections 41(1.1) and (1.3) of the *Police Services Act*, and sections 3(1) and (2) of the regulation, I am satisfied that the personal information disclosed in the media release and by posting on the Police web site is "deemed to be" in accordance with section 32(e) of the *Act*.

SUMMARY OF CONCLUSIONS:

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

- The information disclosed by the police to the prospective tenant does not meet the definition of personal information set out in section 2(1) of the *Act*.
- The information disclosed by the police by way of media release and posting on the Police web site does meet the definition of personal information set out in section 2(1) of the *Act*.
- The disclosure of the complainant's personal information by media release and by posting on their web site is in accordance with section 32(e) of the *Act*.

POSTSCRIPT

The complainant was particularly concerned that the Police not only disclosed his personal information to the media, but also that it was posted on the Police web site. Disclosure of personal information in electronic format on the internet introduces added complexities. Such a medium of disclosure would enable anyone with a computer to develop a database of records that could easily be searched, sorted, matched and manipulated for a wide variety of purposes. The internet allows for information posted on a web site to be accessed by anyone with a computer from almost anywhere in the world. I acknowledge the efforts made by the Police to reduce the accessibility of this type of information by altering the manner in which media releases are posted to their web site and by eventually removing the information about the complainant. I urge the Police to continue to exercise their discretion to disclose personal information under the *Police Services Act* in a thoughtful manner so as not to disclose more information than is necessary to satisfy their purposes.

Warren Morris
Mediator

December 19, 2002