
PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-040018-1

Town of Gravenhurst

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. **MC-040018-1**

INVESTIGATOR: **Alex Kulynych**

INSTITUTION: **Town of Gravenhurst**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (the IPC) received a complaint under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from three members of a family (the complainants) involving the Town of Gravenhurst (the Town). Specifically, the complainants were of the view that information about their appeals to the Ontario Municipal Board (the OMB) relating to a zoning by-law was disclosed contrary to the *Act*.

Summary of Events:

As required by the *Planning Act*, Town Council held a public meeting to allow residents to provide their views with respect to a certain proposed zoning amendment by-law. This meeting was held on April 6, 2004, at which time the Town Council also passed the zoning amendment by-law.

On May 3, 2004, the complainants each submitted a letter to the Town Clerk appealing the by-law to the OMB.

On May 4, 2004, Council held a public meeting at which a report prepared by the Co-ordinator of Development and Chief Planner, addressing the appeals, was presented to Council and discussed. Attached to the report was a draft resolution, the by-law in question, an OMB By-law Appeal Information Package Checklist and the complainants' letters of appeal.

The Town provided copies of the report and attachments to the members of Council, staff, the public and media attending the May 4, 2004 meeting.

The Clerk subsequently forwarded the appeal letters and accompanying documentation to the OMB, as required by the *Planning Act*.

Shortly after the May 4, 2004 Council meeting, details of the appeals appeared in two local newspapers.

The complainants are of the view that the Town inappropriately disclosed their appeal letters to the newspapers. Furthermore, one of the newspapers is owned by a member of the Town Council and the complainants suggest that the councillor may have independently disclosed the contents of the appeals to staff at his paper. Finally, the complainants believe that the Chief Planner provided details of their appeals to a "ratepayer".

DISCUSSION:

The following issues were identified as arising from the investigation:

Is 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,

- (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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and

(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;

As mentioned above, the documentation made available at the May 4, 2004 public meeting consists of a report prepared by the Chief Planner, and as attachments, a draft resolution, the by-law being appealed, an OMB Zoning By-law Appeal Information Package Checklist and the letters of appeal.

I have reviewed the documentation. The Chief Planner's report, the draft resolution, the by-law and the checklist do not identify the complainants or any other individuals. I conclude that these documents do not contain the complainants' personal information.

Each letter of appeal contains the complainant's name, address and views with respect to the relevant by-law. One or more also contain telephone numbers, fax number, signatures and e-mail address. I conclude that the information contained in these documents qualifies as "personal information" as defined in section 2(1) of the *Act*, specifically, the personal information of the complainants.

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

Section 32 of the *Act* sets out a number of circumstances under which an institution may disclose personal information other than to the individual to whom the information relates. This section provides that an institution shall not disclose personal information in its custody or under its control, except in the circumstances listed in sections 32(a) through (l).

The Town relies on sections 32(c), (d) and (e) as its authority to disclose the complainants' personal information. Sections 32(c), (d) and (e) of the *Act* read as follows:

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

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

(d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;

(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;

Disclosure:

The complainants explain that shortly after they filed their appeals through the Town Clerk, details of their appeals appeared in two local newspapers. According to the complainants, they did not provide this information to the press.

The complainants provided this office with copies of articles from the two newspapers, dated within two weeks after the appeals were submitted. The first article, in the paper owned by the councillor, names the complainants and makes reference to their appeals. Within a week thereafter, the other paper also ran a story about the appeals. The article states, "Details of three Ontario Municipal Board (OMB) appeals...have been released by the Town of Gravenhurst". It also names the complainants and quotes from their appeal letters.

In the information provided to this office, the Town refers to section 34 of the *Planning Act* which sets out requirements for the passage of zoning by-laws and the process involved for appeals against the passage of a by-law. Among other things, section 34 requires Council to ensure that the public is given sufficient information to understand generally the zoning proposal through the holding of at least one public meeting, allows for any person who attends the meeting to be given an opportunity to make representations in respect of the zoning proposal, describes alternative procedures and provides timelines. It also lays out the scheme for the filing to the OMB of a notice of appeal against a zoning by-law, including mandatory steps to be taken by the municipality when a notice of appeal is received.

The Town states that when it receives such an appeal, the matter is discussed at a Council meeting open to the public. In this case, the Chief Planner prepared a report which was distributed to councillors. Copies of the report with attachments, including the complainants' letters of appeal, were made available to anyone in attendance at the meeting who requested copies, including the public and media.

The Town submits that the complainants' identities as appellants were not disclosed verbally at the meeting. Furthermore, this type of report is publicly available only at the meeting where the appeal is discussed. Otherwise, any requests for copies of the report and appeal letters must be requested under the *Act*. To illustrate this, the Town refers to an article in one of the two papers issued the day following the meeting. The article describes the effect of the appeals on a farmers' market. The article does not identify the complainants stating, "[the Clerk] for the Town of Gravenhurst confirmed that three appeals were received, but would not disclose who filed them". The Town explains that although the complainants' identities were disclosed at the Council meeting the previous day, the report was not available until after press time. The paper did identify the complainants in subsequent articles.

With respect to the article reporting that the Town "released" the details of the appeals, the Town explains that the "release" refers to the report with attachments which was made publicly available at the May 4, 2004 council meeting.

According to the Town, representatives of the two local papers were present at the May 4, 2004 public meeting and had access to the report and accompanying material. The Town submits that this is how the newspapers became aware of the complainants' identities.

With respect to the complainants' concern that the councillor who owns a local newspaper may have inappropriately disclosed the contents of their appeal letters to his staff, I am not convinced that this occurred as the complainants suggest. The Town advises that all councillors were first made aware of the contents of the appeals on May 4, 2004, the date of the Council meeting. In my view, this is supported by the fact that the appeals were received by the Town just the previous day. The councillor's newspaper staff, along with other members of the press, were present at the meeting when copies of the appeals were made publicly available. Furthermore, details of the appeals were not published in his or other newspapers until after they were disclosed at the public meeting.

In view of the above, I am not convinced that the councillor disclosed the complainants' personal information to his newspaper.

In response to the complainants' concern that the Chief Planner disclosed information about the appeals to a "ratepayer", the Town explains that the Chief Planner outlined the process involved in appeals filed under the *Planning Act*, the role of the OMB and the process for the disposition of such appeals. According to the Town, he did not provide the complainants' identities. The "ratepayer" contacted the Chief Planner after the May 4, 2004 meeting and after reading about the appeals in the press.

Based on the above, I am not persuaded that the Chief Planner disclosed the complainant's personal information.

I will now consider whether the Town's disclosure of the complainants' letters of appeal to the public at the May 4, 2004 Council meeting was in accordance with section 32 of the *Act*.

Section 32(c):

Section 32(c) allows disclosure for the purpose the information was *originally* collected, or for a *consistent* purpose. The meaning of "consistent purpose" is explained in section 33 of the *Act* as follows:

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.

In support of the application of section 32(c) of the *Act*, the Town submits:

The information was disclosed for the purpose [for] which it was collected in carrying out the requirements of the Planning Act informing Council of the nature of the appeals that had been received against a zoning by-law they had

passed...Under the Planning Act, people may attend a public meeting to express their opposition to a by-law Council is considering. In this case, the person stands and provides their name and mailing address in the public forum. In the event that the person does not attend the meeting, they may wish to submit a letter of opposition. The letter is treated in the same manner as a person attending the meeting. As suggested to [one of the complainants] in a letter sent to him in November, 1998, the Corporation does not feel that private information was released without consent as the letter was addressed to the Clerk and was in response to a request for comments under the Planning Act. The letters received from [the complainants] were a substitute for their appearance at a Public Meeting...Under Section 33 of the Act, the Corporation believes "The purpose of a use or disclosure...is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure".

According to the Town, the complainants did not provide oral or written submissions prior to the passage of the by-law. The Town suggests that had the complainants fully participated in the process, they would have publicly identified themselves.

As mentioned above, section 34 of the *Planning Act* describes the process involved in the passing of zoning by-laws, the requirements for filing appeals with the OMB against decisions made by municipal councils with respect to zoning by-laws and the possible dispositions by the OMB of those appeals.

Section 34 of the *Planning Act* reads, in part:

(12) Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (26), the council shall ensure that sufficient information is made available to enable the public to understand generally the zoning proposal that is being considered by the council and, for this purpose, **shall hold at least one public meeting**, notice of which shall be given in the manner and to the persons and public bodies prescribed. [emphasis added]

(13) The meeting mentioned in subsection (12) shall be held not sooner than twenty days after the requirements for the giving of notice have been complied with and **shall be open to the public**, and any person who attends the meeting shall be afforded an opportunity to make representations in respect of the zoning proposal. [emphasis added]

(14) Where there is an official plan in effect in the municipality that contains provisions describing the measures for informing and **securing the views of the public in respect of proposed zoning by-laws** subsections (12) and (13) do not apply to such proposed by-laws if the measures are complied with. [emphasis added]

(14.1) At a meeting under subsection (12), the council shall ensure that information is made available to the public regarding the power of the Municipal Board to dismiss an appeal under subsection (25) **if an appellant has not provided the council with oral submissions at a public meeting** or written submissions before a by-law is passed under this section. [emphasis added]

(14.2) If subsection (14) applies, the information required under subsection (14.1) **shall be made available to the public at a public meeting** or in the manner set out in the official plan for informing and securing the views of the public in respect of proposed zoning by-laws. [emphasis added]

(19) Any person or public body may, not later than 20 days after the day that the giving of written notice as required by subsection (18) is completed, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection, accompanied by the fee prescribed under the *Ontario Municipal Board Act*, 1994, c. 23, s. 21 (8).

(25) Despite the *Statutory Powers Procedure Act* and subsections (11) and (24), the Municipal Board may dismiss all or part of an appeal without holding a hearing, on its own motion or on the motion of any party, if,

(a) it is of the opinion that,

- (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal,
- (ii) the appeal is not made in good faith or is frivolous or vexatious, or
- (iii) the appeal is made only for the purpose of delay;

(a.1) the appellant did not make oral submissions at a public meeting or did not make written submissions to the council before the by-law was passed and, in the opinion of the Board, the appellant does not provide a reasonable explanation for having failed to make a submission;

(b) the appellant has not provided written reasons for the appeal;

(c) the appellant has not paid the fee prescribed under the *Ontario Municipal Board Act*; or

- (d) the appellant has not responded to a request by the Municipal Board for further information within the time specified by the Board. [emphasis added]

Section 34(23) of the *Planning Act* sets out the steps a municipal clerk is required to follow upon receipt of an appeal to the OMB. That section reads:

- (23) The clerk of a municipality who receives a notice of appeal under subsection (19) shall ensure that,
 - (a) a record is compiled which includes
 - (i) a copy of the by-law certified by the clerk of the municipality,
 - (ii) a sworn declaration by an employee of the municipality that notice was given as required by subsection (18), and
 - (iii) the original or true copy of all written submissions and material in support of the submissions received in respect of the by-law before the passing of it;
 - (b) the notice of appeal, record and fee are forwarded to the Municipal Board within 15 days after the last day for filing a notice of appeal under subsection (19); and
 - (c) such other information or material as the Municipal Board may require in respect of the appeal is forwarded to the Board. 1996, c. 4, s. 20 (10).

Section 34(23) requires the municipality to forward prescribed documentation relating to an appeal to the OMB. One OMB form listing material to be forwarded by the clerk of the municipality includes, “Report on the position taken by Council in response to each appeal...”.

Council clearly needs to be familiar with the details of an appeal in order to comply with section 34(23) of the *Planning Act*. To assist in its report to the OMB, Council relies, in part, on public input provided during public meetings. This not only assists Council in formulating its position with respect to a zoning by-law, but affords members of the public an opportunity to express their views on the matter.

In the circumstances of this privacy complaint, the complainants chose, for whatever reason, not to express their views at a public meeting. I agree with the Town’s submissions that had the complainants fully participated in the process, their identities and views would have become public knowledge.

In my view, the original purpose behind the complainants' appeals to the OMB was to challenge the Town's zoning by-law. The complainants submitted their appeals to the Town Clerk, as required by the *Planning Act*. Section 34 of the *Planning Act* contains provisions promoting an open process, requiring a public forum to allow for public input. In fact, under section 34(25), the OMB may dismiss an appeal, without holding a hearing, if there is no oral submission by the appellant in the public meeting, or no written input.

In a democracy, the public delegates decision-making authority to elected representatives and other public servants. Except in very limited and specific circumstances, as outlined in the *Municipal Act*, municipal councillors should conduct their business openly by holding their meetings open to the public. The broader objective of transparency is to ensure that citizens understand how decisions are made and have an opportunity to participate in the decision-making process. The principle of open government is fundamental to a democracy because it allows the public to scrutinize the activities of elected officials and public servants to ensure that they are acting in the public interest.

The consequences of appeals against zoning by-laws affect not only the appellant, council and the municipal administration, but also the residents of the municipality. In keeping with the principles of transparency in government and the need for participation by those affected by a government's decisions, Council introduced and discussed the by-law in question and addressed the complainants' appeals in a public forum. The openness of this appeal process is consistent with the provisions of the *Planning Act* that require an open and public process for passing the original by-law.

In response to the draft report distributed to the parties, the complainants identified what they consider to be inconsistencies in the information provided to this office by the Town. For example, they maintain that they submitted letters of concern regarding the proposed by-law prior to the April 6, 2004 public meeting. The complainants also dispute the Town's submission that the letters of appeal would be publicly available only at the Council meeting where the appeals were discussed, otherwise a request under the *Act* for copies would be necessary.

I have reviewed and considered all of the complainants' comments in reaching my conclusions. The conclusions reached in this report are based solely on the incident which gave rise to these complaints, that is, disclosure of the complainants' letters of appeal against a zoning by-law as part of the public process set out in the *Planning Act*, and in accordance with the principles of open government.

I conclude, therefore, that the Town disclosed the complainants' appeal letters for the original purpose for which they were obtained, that is, as part of the statutory process for the passage of zoning by-laws. The Town's disclosure of the complainants' appeal letters was in accordance with section 32(c) of the *Act*.

Having reached the conclusion that the disclosure of the complainants' appeal letters was in accordance with the *Act*, I feel that it is important for the Town to ensure that anyone who wishes to participate in the zoning by-law process in the future is made aware of the public nature of this process.

CONCLUSION:

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

1. The information in question is “personal information” as defined in section 2(1) of the *Act*;
2. The disclosure of the “personal information” was in accordance with section 32 of the *Act*.

Original signed by:

Alex Kulynych
Investigator

August 17, 2005