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INVESTIGATION REPORT

INVESTIGATION MC-990048-1
Township of Springwater

May 2, 2001

INTRODUCTION:

Background of the Complaint

Letter #1

A resident of the Township of Springwater (the Township) filed an objection with the Township Clerk concerning certain proposed development activity under consideration by the Township. The Clerk referred the objection to the Township's Chief Administrative Officer, who in turn raised the matter with a planner employed by the developer (the developer's planner). After receiving a response from the developer's planner, the matter was discussed at a closed session of the Township Council and referred to the Township's Solicitor and outside planning consultant (the outside planning consultant) for further action.

Letter #2

The resident filed a second objection with the Township concerning a re-zoning application under consideration by the Township. The Township Council referred this matter to the Snow Valley Working Group (the Working Group), an organization whose membership included the developer's planner who is the subject of letter #1.

The resident (now the complainant) sent a letter of complaint to this Office, alleging that the Township had improperly disclosed his personal information to the developer's planner and to the outside planning consultant (letter #1) and to the Working Group (letter #2), contrary to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the Act).

The complainant's letter also identified three other matters which, as explained by the mediator, fall outside the scope of this investigation.

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*?

(B) Did the Township disclose personal information relating to letter #1 and, if so, was this disclosure in accordance with section 32 of the *Act*?

(C) Did the Township disclose personal information relating to letter #2 and, if so, was this disclosure in accordance 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, in part:

"personal information" means recorded information about an identifiable individual, including,

(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,

The two letters of objection submitted to the Township by the complainant contain his name, address, telephone and fax number, as well as his views and opinions regarding development issues under consideration by the Township. As such, I find that the information contained in the two letters falls within the scope of paragraph (e), and therefore qualifies as the complainant's personal information.

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

Issue B: Did the Township disclose personal information relating to letter #1 and, if so, was this disclosure in accordance with section 32 of the *Act*?

The complainant maintains that letter #1 was disclosed to the developer's planner by the Township's Chief Administrative Officer, and subsequently to the outside planning consultant following consideration by the Township Council. The complainant does not indicate any objection to disclosure to the Township Solicitor.

The Township denies that letter #1 was disclosed. It takes the position that the subject matter of the complainant's concerns was discussed with the developer's planner, but the actual letter was

not disclosed. According to the Township, the complainant's identity was not revealed to the developer's planner during the course of these discussions.

I have reviewed the summary of the content of the complainant's first objection that was prepared by the Township's Chief Administrative Officer and provided by him to the developer's planner, as well as the response provided by the developer's planner. This exchange of correspondence did not identify the complainant or disclose any of the complainant's personal information. There is nothing in the content of these letters to suggest that the developer's planner was aware of the identity of the complainant or any of his personal information. Although the complainant holds the view, based on actions taken by the developer and informal discussions with other individuals during the relevant time period, that his identity was disclosed by the Township, I am unable to conclude, based on information provided to me during the course of this investigation, that letter #1 was disclosed to the developer's planner. The explanation offered by the Township is reasonable and it would appear that the nature of the complainant's objection, but not his identity or other personal information, was disclosed to the developer's planner, as suggested by the Township.

As far as the outside planning consultant is concerned, the Township acknowledges that letter #1 was provided to him, as directed by Township Council. This issue is whether or not this disclosure was in compliance with section 32 of the *Act*.

Section 32 lists a number of permitted disclosures of personal information, including section 32(c) which states:

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

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

In a facsimile sent to the Township Solicitor, dated July 6, 1999, the Township states:

Council directed that these letters and in particular, the second letter concerning zoning status be referred to yourself and [the] Township Planning Consultant ... for advice. In particular, the Township is seeking advice on how the municipality should proceed in this matter.

The outside planning consultant was retained by the Township in order to provide services within his area of expertise, specifically land use planning issues involving the Township. The subject matter of letter #1 clearly falls within the scope of this area of expertise. Had the Township referred the letter to an employee hired by the Township to provide planning advice, in my view, this disclosure would have been for the purpose for which the information in the letter was obtained - to consider the land use planning implications of the objection made by the complainant to the specific development activity discussed in letter #1. The fact that the Township, which is a relatively small entity, utilizes the services of an outside planning consultant, rather than an employee, to provide land use planning advice, in my view, does not

change the nature of the disclosure. The Township disclosed the complainant's personal information contained in letter #1 to the outside planning consultant for the same purpose for which it had been collected, namely to consider the content of the complainant's objection and to provide the Township Council with advice as to what steps should be taken in response. I find that this disclosure falls within the scope of section 32(c) of the *Act*.

(See Investigation Reports I93-043M and I96-113P)

Conclusion: It would appear that letter #1 was not disclosed by the Township to the developer's planner, nor was there a disclosure of the complainant's identity or any other personal information.

The disclosure of letter #1 by the Township to the outside planning consultant was in accordance with section 32(c) of the *Act*.

Issue C: Did the Township disclose personal information relating to letter #2 and, if so, was this disclosure in accordance with section 32 of the *Act*?

The complainant contends that letter #2 was disclosed by the Township to the Working Group, and objects to this disclosure because the developer's planner referred to in letter #1 was a member of the Working Group.

The Township takes the position that the issues identified in letter #2 were communicated to the Working Group, but not the actual letter or any personal information of the complainant. Specifically, the Township states,

... the Township denies that the letter of complaint dated January 7, 2000 was provided to the Snow Valley Working Group of the Planner of the Property owner.

The complainant provided this Office with a copy of a January 11, 2000 letter he received from the Township which states "Your faxed letter of January 7, 2000 ... has been referred to the Snow Valley Secondary Plan Working Group". When asked to respond to what was meant by the word "referred", the Township reiterated that it was the subject matter of the objection, and not letter #2 itself or any personal information of the complainant that was provided to the Working Group.

In the absence of any evidence provided by the complainant or obtained during the course of this investigation, I am unable to conclude that letter #2 was disclosed to the Working Group. The explanation offered by the Township is reasonable and it would appear that the nature of the complainant's objection, but not his identity or other personal information, was disclosed to the Working Group, as suggested by the Township.

Conclusion: It would appear that letter #2 was not disclosed by the Township to the Working Group, nor was there a disclosure of the complainant's identity or any other personal information.

SUMMARY OF CONCLUSIONS:

- The information in question was personal information as defined in section 2(1) of the *Act*.
- It would appear that letter #1 was not disclosed by the Township to the developer's planner, nor was there a disclosure of the complainant's identity or any other personal information.
- The disclosure of letter #1 by the Township to the outside planning consultant was in accordance with section 32(c) of the *Act*.
- It would appear that letter #2 was not disclosed by the Township to the Working Group, nor was there a disclosure of the complainant's identity or any other personal information.

Original signed by: Tom Mitchinson, Assistant Commissioner
May 2, 2001