

Information and Privacy Commissioner,
Ontario, Canada



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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT MC17-48

Town of East Gwillimbury

November 20, 2019

Summary: The Office of the Information and Privacy Commissioner of Ontario received a complaint alleging that the Town of East Gwillimbury (the town) contravened the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) when it released a record with the complainant's personal information to the public. A complaint was opened to review the town's collection, use and disclosure of the information at issue. In this report, I find that some of the information contained in the record at issue is personal information. I find that the town's collection and use of that information was in accordance with the *Act*. However, I find that the disclosure of the personal information in the publicly available record was not in accordance with section 32 of the *Act*.

I recommend that the town redact all street numbers and street names contained in the publicly available memo, chart, agenda and the Special Council Meeting minutes.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter M.56, Municipal Act S.O. 2001, c.25.*

Orders and Investigation Reports Considered: Order 11, Order 23, Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, [2002] O.J. No. 4300 (C.A.), Order PO-3088, Order PO-3616, MO-2053, PO-2322, PO-3088, I94-057M, I94-095P, PC-000020-1, PC-990033-1, MC-060026-1, MA-990101-1, PO-2265, I94-023P, PO-3616, MO-2146-I, MO-3686, PO-2265, MO-2019.

BACKGROUND:

[1] The Office of the Information and Privacy Commissioner of Ontario (the IPC)

received a privacy complaint under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) relating to the town's publication of an agenda for a council meeting that included the complainant's personal information. The complainant believes that her personal information has been collected, used and disclosed by the town in contravention of the *Act*.

[2] The complainant advised that on June 22, 2017, she made a Freedom of Information (FOI) request for a record related to her property that was reviewed at a closed session meeting of council. The town subsequently issued a decision releasing the record to her.

[3] The complainant explained that after submitting her FOI request and receiving the record, she received a weekly email from the town that provided information about the town's meetings of council. The email included the agenda for an upcoming meeting of town council. An item on the agenda titled "To adopt Council minutes from the special meeting held on [a particular date]" included a link that allowed the public access to the record the complainant received through her FOI request that related to her property.

[4] The special meeting minutes on the specified date stated that the town moved to a closed meeting to deal with a personal matter about an identifiable individual¹ and a request under the *Act*². The complainant advised that the minutes of the special meeting also stated that the town council had carried a motion to make the record public and published on the agenda, redacting any personal information. I have been provided with a copy of the minutes of the special meeting confirming this set of facts. The complainant explained that although the motion included a direction to redact her personal information, the record was released containing some of her personal information.

[5] The complainant advised that the record continues to be available on the town's website and she believes that the record continues to contain her personal information, including her conduct as the resident of the property.

[6] The complainant also raised concerns that she was not advised that the town had drafted the record and was not given the opportunity to identify any errors prior to the information being published. The complainant believes that the information contained in the publicly available record is inaccurate, misleading, defamatory and identifies open violations of the *Ontario Building Code*. The complainant also advised that she was not notified by the town that it would be releasing the record to the public via the Internet.

¹ *Municipal Act* section 239(2)b.

² *Municipal Act* section 239(3)a.

ISSUES:

The following issues were identified as arising from this investigation:

1. Does the information at issue qualify as "personal information" under section 2(1) of the *Act*?
2. Was the town's collection of the information at issue in accordance with section 28 of the *Act*?
3. Was the town's use of the information at issue in accordance with section 31 of the *Act*?
4. Was the town's disclosure of the information at issue in accordance with section 32 of the *Act*?

DISCUSSION:

Issue 1: Does the information at issue qualify as "personal information" under section 2(1) of the *Act*?

[7] In order to determine whether the town has complied with the *Act*, it is first necessary to decide whether the information contained in the record at issue is personal information.

[8] The information in question is the information contained in a record that includes a memo and a chart that is related to the complainant's address. The town made this record available for public viewing on its website.

[9] The chart includes a list of issues with the home at the listed address and in the surrounding area. For each issue listed the chart provides a description of the issue, the responsible department/staff, the relevant governing document (subdivision agreement or building code section) and the status of the issue as of a particular date. The status section of the chart includes the complainant's observations, views and experiences that relate to her property. Prior to posting the chart on its website, the town redacted some information in the chart that the town had determined to be personal information.

[10] The information in the memo includes an address, the fact that the resident (the complainant) of the address raised issues regarding her home, the number of emails and phone calls the resident of the listed address sent to the town over a two and a half year period, the number of return emails, phone calls and meetings by the town, the number of emails the remaining homeowners in a named subdivision sent in 2011, 2012 and 2013, and an estimate of the amount of town resources dedicated to address the contacts by the resident. The memo also refers to a matter potentially affecting the complainant.

[11] Section 2(1) of the *Act* states:

“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;

[12] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.³

[13] To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that an individual may be

³ Order 11.

identified if the information is disclosed.⁴

[14] Previous orders of this office have drawn a distinction between personal information, as opposed to information about a property.⁵ However, if information about a property reveals something of a personal nature about an individual, that information is considered to be personal information.⁶

[15] The town's position is that the unredacted information in the publicly available record was not personal information.

[16] The town identified appeal MA-990101-1 in support of its position. The town stated the following:

. . . previous orders have found that addresses or geographical locations, in and of themselves, do not necessarily constitute "personal information" under section 2(1) of the *Act* (Orders 23, M-15, M-176 and M-181). In order M-15, former Commissioner Tom Wright pointed out that a municipal location or address itself could not automatically be equated with the address of the owner. Thus, a municipal address or legal description of a property alone would not necessarily reveal information about an identifiable individual.

[17] The town's position is that a municipal address on its own does not reveal personal identifiable information and that any personal information was redacted from the copy of the record at issue that was made a matter of public record to avoid unjustified invasion of the complainant's privacy.

Analysis:

[18] Several previous orders of this office have considered whether information about a residential property is also "personal information".

[19] In Order 23, former Commissioner Sidney B. Linden addressed the distinction between "personal information" and a residential property. Order 23 has been applied in a number of subsequent orders of this office.⁷ In Order 23, the Commissioner made the following findings regarding the distinction to be made between information that qualifies as personal information and information about residential properties:

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁵ Order PO-3088.

⁶ Order PO-3616.

⁷ Orders MO-2053, PO-2322, PO-3088.

In considering whether or not particular information qualifies as personal information I must also consider the introductory wording of subsection 2(1) of the *Act*, which defines personal information as . . . any recorded information about an identifiable individual. . . . In my view, the operative word in this definition is about. The Concise Oxford Dictionary defines about as in connection with or on the subject of. Is the information in question, i.e. the municipal location of a property and its estimated market value, about an identifiable individual? In my view, the answer is no; the information is about a property and not about an identifiable individual.

The institution's argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of subparagraph (h) of the definition of personal information.

Subparagraph (h) provides that an individual's name becomes personal information where it ...appears with other personal information relating to the individual or where the disclosure of the name would reveal other information about the individual (emphasis added). In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of property owners, and the release of these names was never at issue. However, even if the names were otherwise determined and added to the requested information, in my view, the individual's name could not be said to appear with other personal information relating to the individual or reveal other personal information about the individual, and therefore subparagraph (h) would not apply in the circumstances of these appeals.

[20] Senior Adjudicator John Higgins, in Order MO-2053, reviewed the jurisprudence following Order 23, which clearly sets out this distinction between information about property and personal information. He states:

Subsequent orders have further examined the distinction between information about residential properties and "personal information". Several orders have found that the name and address of an individual property owner together with either the appraised value or the purchase price paid for the property are personal information (Orders MO-1392 and PO-1786-I). Similarly, the names and addresses of individuals whose property taxes are in arrears were found to be personal information in Order M-800. The names and home addresses of individual property owners applying for building permits were also found to be personal information in Order M-138. In addition, Order M-176 and Investigation Report I94-079-M found that information about individuals alleged to have

committed infractions against property standards by-laws was personal information. *In my view, the common thread in all these orders is that the information reveals something of a personal nature about an individual or individuals.*

The information at issue in this case bears a much closer resemblance to information which past orders have found to be about a property and not about an identifiable individual. For example, in Order M-138, the names and home addresses of individual property owners who had applied for building permits were found to be personal information, but the institution in that case did not claim that the property addresses themselves were personal information, and the addresses were disclosed. In Order M-188, the fact that certain properties owned by individuals were under consideration as possible landfill sites were found not to be personal information. Similarly, in Order PO-2322, former Assistant Commissioner Tom Mitchinson found that water analysis and test results concerning an identified property were information about the property, not personal information.

[21] I agree with the rationale in Order 23, and subsequent orders, and will apply that rationale here. I find that the information in the chart that is specifically a description of the issues with the home and the property surrounding the listed address is information that is "about" the property in question and not about the complainant as the individual homeowner. As such, I find that this information in the chart falls outside the scope of the definition of "personal information" in section 2(1) of the *Act*.

[22] With respect to the information contained in the memo, after careful review of the previous orders of the IPC, I find that (where not associated with an identifiable individual) the number of return emails, phone calls and meetings by the town, the number of emails the remaining homeowners in a named subdivision sent in 2011, 2012 and 2013 and an estimate of the amount of town resources dedicated to address the contacts by the complainant is also not the complainant's personal information.

[23] However, the remaining information may be personal information. The remaining information includes the complainant's address, the fact that the complainant, who is the resident of the address, raised issues regarding her home, the number of emails and phone calls the complainant sent to the town over a two and a half year period, a potential matter affecting the complainant and the complainant's observations, views and experiences that relate to her property.

[24] In IPC Order PO-2265, former Assistant Commissioner Tom Mitchinson considered the proper classification of address information under the *Act*. In that case, the appellant had sought the street address, city, postal code and specific unit numbers of units that were subject to applications before the Ontario Rental Housing Tribunal. The former Assistant Commissioner stated:

It is well established that an individual's address qualifies as "personal information" under paragraph (d) of section 2(1) of the *Act*, as long as the individual residing at the address is identifiable. However, previous orders have found that if an address is not referable to an identifiable individual it does not constitute personal information for the purposes of the *Act*. For example, in Order PO-2191, Adjudicator Frank DeVries found that an address contained on an occurrence report for a motor vehicle collision was not "personal information". He determined that the address was simply a reference point used by the Police to identify where the collision took place, and that there was no indication that the address was referable to an identifiable individual or that any individual at that address was in any way involved in the incident.

[25] In concluding that the address information at issue in Order PO-2265 qualified as personal information, Assistant Commissioner Mitchinson stated further:

In my view, if all of this address-related information is disclosed, it is reasonable to expect that the individual tenant residing in the specified unit can be identified. Directories or mailboxes posted in apartment buildings routinely list tenants by unit number, and reverse directories and other tools are also widely available to search and identify residents of a particular unit in a building if the full address is known.

[26] The reasoning of Order PO-2265 was followed by Commissioner Brian Beamish in Order MO-2019, which was an appeal of a decision of the York Regional Police Services Board to deny access to a list of addresses that the police had identified as illegal drug "grow houses" or chemical labs. In concluding that the address information in that case was personal information, Assistant Commissioner Beamish stated:

In the present appeal, the addresses in the record relate to illegal grow house operations. The proper question for me to address is whether disclosure of these addresses would reveal something about an individual that is inherently personal in nature. In my view, it would. I agree with the substance of former Assistant Commissioner Mitchinson's findings in PO-2265. While the address of a property may not, on its face, be personal information, a "reasonable expectation of identification" arises because the address may potentially be linked, using various methods or tools such as municipal property assessment rolls or reverse directories, with an owner, resident, tenant, or other identifiable individual. Unlike Order PO-2322, where the record at issue contained attributes relating to the property, in this case the record also contains information relating to individuals, who may be easily identified. As in Order PO-2265, where the record at issue would have revealed the identifiable individual's involvement in a rental housing matter, the record at issue here would reveal an identifiable individual's involvement in an alleged criminal

activity, whether as accused or as unfortunate “innocent owner” of the property in question. The effect is the same: personal information about the individual who can reasonably be expected to be identified will be revealed by disclosure of the requested information [emphasis added].

[27] I agree with the reasoning set out by former Assistant Commissioner Tom Mitchinson and Commissioner Brian Beamish and apply it to the circumstances of this complaint.

[28] Based on the above, the appropriate consideration in determining whether an address is personal information is whether the disclosure of that address could reasonably be expected to identify an individual and would reveal something inherently personal about the individual rather than something that is interpreted as a characteristic of the property.

[29] In the circumstances of this complaint, the information in the memo provides the complainant’s address, the fact that the complainant raised concerns, the details regarding the number of emails and phone calls made by the complainant over a particular period of time and the matter potentially affecting the complainant.

[30] The chart contains the complainant’s address as well as the complainant’s observations, views, and experiences that relate to her property and its condition. Previous IPC orders indicate that comments regarding an individual’s personal observations about a property⁸, subjective views regarding a property⁹ and personal experiences that relate to property conditions¹⁰ have been found to be personal information.

[31] Even though the complainant’s name is not referred to in the memo or the chart, it is reasonable to expect that the address in combination with the information listed would identify the complainant. The name of the complainant could be connected to the address and, as a result, the additional information included in the memo and chart would reveal the nature of the individual’s contact with the town, that the complainant may be involved in a matter that may affect her and her personal observations, views and experiences related to the property and its condition.

[32] Accordingly, I find that the complainant’s address combined with information in the record showing that the complainant raised concerns, the details regarding the number of emails and phone calls by the complainant over a particular period, a matter potentially affecting the complainant, and her personal observations, views and experiences related to the property and its condition, qualify as personal information of

⁸ Order MO-2146-I.

⁹ Order MO-3686, Order PO-3616.

¹⁰ Order PO-3616.

the complainant in accordance with section 2(1). I would observe here, however, that the redaction of information in the record which serves to identify the complainant, such as her address, would effectively anonymize the remainder of the information (such as her observations, views and experiences and the number of contacts she had with the town), so that it would no longer be considered to be personal information in its redacted form.

Issue 2: Was the town's collection of the information at issue in accordance with section 28 of the *Act*?

[33] Section 28(2) of the *Act* states:

Collection of Personal Information

28(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

[34] This section of the *Act* sets out the circumstances under which personal information may be collected by an institution. In order for such a collection to be permissible, it must satisfy one of the following conditions: it must either be (1) authorized by statute; (2) used for the purposes of law enforcement; or (3) necessary to the proper administration of a lawfully authorized activity.

[35] In order for a given collection of personal information to be permissible under the *Act*, the institution in question must demonstrate that the collection was in accordance with at least one of the above noted exceptions.

[36] The town explained that the collection of information was pursuant to the *Act* because the information was collected from the complainant for the purpose of enforcing provisions of: the *Ontario Building Code*, various town by-laws; and town agreements with third party entities. The town's explanation falls under the third exception, that the collection is 'necessary to the proper administration of a lawfully authorized activity'.

[37] I accept that in order to review a complaint and enforce provisions of the *Ontario Building Code*, various town by-laws, and town agreements with third party entities, it would be necessary for the town to collect information about the issues from the complainant.

Issue 3: Was the town's use of the information at issue in accordance with section 31 of the *Act*?

[38] The complainant raised concerns that the town's decision to compile the collected information in a chart to provide to council is a violation of the *Act*.

[39] Section 31 of the *Act* states:

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

(a) if the person to whom the information relates has identified that information in particular and consented to its use;

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

(c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*.

[40] In order for a given use of personal information to be permissible under the *Act*, the town must demonstrate that the use was in accordance with at least one of the section 31 exceptions.

[41] In reviewing the subsections set out in section 31 of the *Act*, I note that section 31(a) applies when consent is provided by an individual to permit a specific use. No such consent was provided in the circumstances of this complaint.

[42] In order to assess whether the actions of the town are in accordance with section 31(b), it is necessary to first determine the purpose for which the information was obtained or compiled. Then, I must determine whether the information is used for these same purposes, or for a purpose that is consistent with these purposes.

[43] When considering the possible application of section 31(b), it should be noted that section 33 defines consistent purpose as referenced in section 31(b) 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.

[44] In this complaint, the town has advised that the information was collected from the complainant for the purpose of enforcing provisions of: the *Ontario Building Code*, various town by-laws, and town agreements with third party entities. The town explained that the information was subsequently used to report to council staff's progress in resolving the enforcement issues identified by the complainant and the associated costs.

[45] It is my view that it is reasonable for an individual in the position of the complainant to expect that the town staff may discuss with council ongoing issues with respect to a complaint to the town that deals with a number of enforcement issues, costs associated with the complaint and the possibility of future costs. I find that the

town's use of the information is for a consistent purpose and falls under section 31(b).

Issue 4: Was the town's disclosure of the information at issue in accordance with section 32 of the *Act*?

[46] Under the *Act*, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 32.

[47] Section 32 of the *Act* states:

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

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (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, employee, consultant or agent of the institution who needs the record in the performance of their 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;
- (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;

(i) in compassionate circumstances, to facilitate contact with the spouse, a close relative or a friend of an individual who is injured, ill or deceased;

(j) to the Minister;

(k) to the Information and Privacy Commissioner;

(l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.

[48] The disclosure of the complainant's personal information occurred after town council approved that the record presented in a closed meeting be made available for public viewing on the town's website.

[49] The complainant disagrees with the town's decision to make the two record that contained her personal information publicly available. She also objects to the disclosure of her address appearing in an agenda and Special Council Meeting minutes that are linked to the record.

[50] The town's position is that the information contained in the record does not contain personal information and, therefore, there has been no unauthorized disclosure.

[51] The town explained that the complainant filed an access request with the town and requested a copy of the record at issue in this complaint. The town advised that the record was considered at a town council meeting that was closed to the public. The town staff recommended to council that the record at issue be made public so that the record could be provided to the complainant. I would note here that this step was not actually necessary in relation to the complainant's personal information, given that the complainant had a right to request access to her own personal information under sections 36 and 37 of the *Act* and the town had the discretion to disclose the information to the complainant under the discretionary exemption at section 38(1) in conjunction with the discretionary exemption at section 6 of the *Act*.

[52] Nonetheless, council adopted the recommendations of staff, with the direction that the complainant's personal information be redacted, which resulted in the record at issue becoming a matter of public record. The town advised that personal information was redacted from the copy of the chart that was made a matter of public record to avoid an unjustified invasion of the complainant's privacy. No information was redacted from the memo.

[53] I determined under Issue 1 above, that information in the memo and chart contained the personal information of the complainant. I note again here that some of this personal information was not redacted from the record that was made publicly available.

[54] As part of my inquiries to the town, I asked, in the event I determine that the information at issue is personal information, whether the information was disclosed in accordance with section 32 of the *Act*. The town did not refer to any specific paragraph under section 32 that would authorize the disclosure in accordance with the *Act*.

[55] Even though the town did not specify a section of the *Act* that would authorize the disclosure, I am obliged to consider section 32 and whether any of the sections would apply in the circumstances of this complaint.

[56] As noted above, section 32(e) states that

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

(d) for the purposes for which it was obtained or complied or for a consistent purpose; ...

(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;

[57] In Investigation I94-023P, our office found that for section 42(e) of the *Freedom of Information and Protection of Privacy Act* (which mirrors section 32(e) of the *Act*) to apply, the statute in question must impose a duty on the institution to disclose the individual's personal information; a discretionary ability to disclose is not sufficient. The report stated:

It is our view that the word "complying" in section 42(e) indicates that the requirement in question must be mandatory in nature.

[58] This interpretation has been adopted and consistently applied in many investigations since.¹¹

[59] In my consideration of section 32, it is necessary to have regard to provisions of the *Municipal Act*, specifically sections 239(1) and (2) and 253(1), as follows,

239 (1) Except as provided in this section, all meetings shall be open to the public.

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

¹¹ I94-057M, I94-095P, PC-000020-1, PC-990033-1.

...

(b) personal matters about an identifiable individual, including municipal or local board employees;

253(1) Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, any person may, at all reasonable times, inspect any of the records under the control of the clerk, including,

(b) minutes and proceedings of regular, special or committee meetings of the council or local board, whether the minutes and proceedings have been adopted or not;

(c) records considered at a meeting, except those records considered during that part of a meeting that was closed to the public;

[60] In previous complaint reports of this office it has been noted that section 253(1) is premised on the notion that the operation of municipal government is intended to be transparent to the public. This principle is reflected in the wording of the *Act* and the *Municipal Act*, both of which contain provisions relating to open government and accessibility to government records.¹² However, the openness principle is qualified to the extent that a meeting may be closed to the public under section 239(2) to consider personal matters about an identifiable individual.

[61] In the circumstances of this complaint, the town council had initially discussed the record as part of a closed meeting. This was appropriate given the town council's authority under section 239(2) to close a meeting to the public where personal matters about the complainant (i.e., her contacts with the town, her personal views, observations and experiences and the matter potentially affecting the complainant) are being considered. Section 253(1)(c) of the *Municipal Act* allows municipalities to refuse access by the public to records considered at a meeting that was closed to the public and, in this case, the record at issue had not been made publicly available.

[62] Subsequently, the council approved a motion to release the record that had been considered in the closed meeting but with any personal information redacted. Section 253(1)(c) requires the town to make minutes and proceedings of council meetings and records considered at such meetings publicly available, except for any records considered during part of a meeting that was closed to the public. It is noteworthy that the public access to records provision at section 253(1) of the *Municipal Act* is expressly made subject to the provisions of the *Act*, which includes the personal privacy

¹² MC-060026-1.

protections at Part II.

[63] In this case, the town council authorized town staff to release only those portions of the record that did **not** contain the complainant's personal information. It is apparent from my findings above that the town, in fact, did release the complainant's personal information contained in the record considered in the town council closed meeting. In these circumstances the disclosure of the complainant's personal information cannot be considered to have been authorized under section 253(1)(c) "for the purpose of complying with an Act of the Legislature" within the meaning of section 32(e) of the *Act*. Moreover, while the internal use of the complainant's personal information by town staff and town council may be considered to have been consistent with the purpose for which it was collected, I have been offered no basis on which to conclude that the public disclosure of this personal information on the town's website (or otherwise) was made for a consistent purpose within the meaning of section 32(c) of the *Act*.

[64] I note the town's position that the record was made publicly available to facilitate its response to the complainant's access request. While this may provide justification for disclosure of the portions of the record that did not contain the complainant's personal information, the town's position ignores the fact that the requester has a right of access to her own personal information. As noted above, facilitating the complainant's access request could lawfully have been accomplished by the town exercising its discretion under section 38(a) in conjunction with section 6(1)(b) of the *Act* to disclose the complainant's personal information to her alone, without disclosing it generally to the public. The "closed meeting exception" to the public right of inspection at section 253(1)(c) of the *Municipal Act* may be seen as a potential bar to the complainant gaining access to her own personal information. However, this potential barrier is overcome by section 53(1) of the *Act*, as follows:

53 (1) This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

(2) The following confidentiality provisions prevail over this Act:

1. Subsection 88 (6) of the Municipal Elections Act, 1996.
2. Subsection 53 (1) of the Assessment Act.

[65] Section 253(1) of the *Municipal Act* is not listed as a prevailing provision at section 53(2) and section 253(1) is expressly made subject to the *Act*. Thus, the town had the discretion under section 38(a) of the *Act* to release the record to the complainant, as a requester, without first making them public.

[66] In light of the above, I find that the memo and chart contain personal information of the complainant and the disclosure of the complainant's personal information was not authorized under section 253(1)(c). Accordingly, this disclosure

was not made “for the purpose of complying with an Act of the Legislature” within the meaning of section 32(e) of the *Act*. As no other exception to the prohibition against the disclosure of personal information applies, I find that this disclosure was not in compliance with section 32 the *Act*.

[67] Given that I have found that the memo and chart contains personal information of the complainant and in order to de-identify the record at issue, I recommend that the town proceed to redact all street numbers and street names contained in the memo, the chart, the agenda and the Special Council Meeting minutes that are linked to this record. I enclose with the copy of this report sent to the town and the complainant a highlighted copy of the record at issue showing the information that should be redacted.

CONCLUSION:

1. The complainant’s address, the fact that the complainant raised concerns, the details regarding the number of emails and phone calls by the complainant over a particular period of time, the matter potentially affecting the complainant, the complainant’s observations, views and experiences with the conditions of the property that is contained in the memo and chart qualifies as personal information as in accordance with section 2(1) of the *Act*.
2. The collection of the personal information was in accordance with section 28 of the *Act*.
3. The personal information was used in compliance with section 31 of the *Act*.
4. The disclosure of personal information was not compliance with section 32 of the *Act*.

RECOMMENDATION:

I recommend that the town redact all street numbers and street names contained in the publicly available memo, chart, agenda and Special Council Meeting minutes.

The town has reviewed this Report and agreed to implement the recommendations described above. Within 30 days of receiving this Report, the town should provide this office with proof of compliance with the above recommendation.

Original signed by _____
Alanna Maloney
Investigator

November 20, 2019