

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 MI18-1

The Corporation of The Village of Newbury

June 29, 2021

Summary: The Office of the Information and Privacy Commissioner of Ontario received a privacy complaint involving the Corporation of the Village of Newbury (Newbury). The complaint was about Newbury's installation of a video surveillance system in a park. The complainant was concerned that Newbury's operation of the surveillance system breached the privacy of individuals under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

This report concludes that Newbury's notice of collection is not in accordance with the *Act*. However, it finds that Newbury's collection, use and disclosure of the personal information is in accordance with the *Act*. Further, it finds that there is a right of access to this information and that the Newbury has reasonable protection measures and proper retention periods in place.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, as amended, ss. 2(1), 28(2), 29(2), 30(1), 31, 32(a), (b), (c) and (g) and 36(1); *Municipal Act, 2001* S.O. 2001, c. 25, as amended, section 11(1); and *R.R.O. 1990*, Regulation 823, as amended, sections 3(1) and 5.

Orders and Investigation Reports Considered: Privacy Investigation Report MC07-68; Privacy Complaint Reports MC13-46, MC13-60, and PR16-40; and investigation Report I93-044M.

OVERVIEW:

[1] The Office of the Information and Privacy Commissioner of Ontario (IPC or this office) received a privacy complaint under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) about the Corporation of the Village of Newbury

(Newbury)'s installation of surveillance cameras in Old Boys Park (the park).

[2] The park is located in Newbury. It has a ball diamond, splash pad and playground equipment. In July 2016, the complainant became aware of the use of cameras above the splash pad and playground areas in the park, after he received a notice from Newbury's By-law Officer alleging that he had committed the by-law infraction of running an animal (that is, his dogs) at large.¹

[3] The complainant was concerned about the cameras as he claimed that there were no signs within the park informing visitors that the area is under surveillance. He also expressed concerns about the purpose of the surveillance system and whether its operation was in accordance with the *Act*.

[4] The complainant advised that, in July 2016, he raised his concerns to Newbury and also asked for a copy of the policies and procedures relating to the surveillance system as well as certain video footage. The complainant was not satisfied with Newbury's response, as he claimed that he did not receive any documentation regarding the system or access to the footage that he requested.

[5] To address this matter, the IPC opened a Commissioner-initiated privacy complaint file and commenced an investigation to review Newbury's practices relating to the video surveillance system that it installed in the park.

[6] In response, Newbury, which has a population of 439 people², provided this office with detailed information about the surveillance system, as well as other relevant information discussed below. Newbury also provide a copy its "Video Surveillance Policy" (the Surveillance Policy).³

BACKGROUND:

Video Surveillance Cameras Installation

[7] Newbury advised that, in the summer of 2016, four (4) cameras that point north, south, east and west from a booth where a receiver is located, were set up in the park. Newbury also advised that all of the cameras began recording at that time and that they are motion activated.

[8] In response to the complainant's concerns, Newbury advised that it took the following steps:

¹ Newbury By-law Number 115-2007.

² <http://www.newbury.ca/index.html>

³ Newbury provided three versions of the Surveillance Policy: Version 1 dated September 12, 2016, Version 2 dated December 19, 2016 and Version 3 dated April 26, 2017.

- created the Surveillance Policy, which was accepted by its Council on September 12, 2016;
- created a notice dated July 15, 2016 regarding the surveillance cameras (the Surveillance Notice) that was posted on its website on⁴ and, on July 20, 2016; and
- placed a sign at the entrance of the park regarding the surveillance cameras.

[9] In addition, Newbury advised that, on September 2, 2016, it received two access requests from the complainant for a copy of the Surveillance Policy and certain video footage. In a September 28, 2016 decision letter regarding these requests, Newbury advised that it granted him full access to the responsive records.

The Surveillance Policy

[10] The Surveillance Policy makes it clear that Newbury “is committed to safety, crime prevention, and stewardship of publicly owned assets.” To that end, this policy provides that Newbury may use its video surveillance system as follows:

Where warranted, the Village of Newbury, may use video surveillance systems in municipally owned or operated buildings and open spaces to deter and detect crime and anti-social behavior such as theft, vandalism and unauthorized entry.

[11] Further, the Surveillance Policy sets out the purpose of Newbury’s video surveillance. This policy states:

PURPOSE:

The Village of Newbury shall use video surveillance equipment systems in accordance with the Municipal Freedom of Information and Protection of Privacy Act.

DISCUSSION:

[12] The following addresses whether Newbury’s video surveillance system in the park is in accordance with the privacy protection rules set out in the *Act*. Among other things, the *Act* sets out rules relating to the collection, notice, use, disclosure, security and retention of personal information.

[13] In this report, I will refer to the IPC’s *Guidelines for the Use of Video Surveillance*

⁴ http://newbury.ca/video_surveillance_notice.pdf.

(the Guidelines)⁵. The Guidelines set out best practices for institutions to follow when implementing a video surveillance system.

ISSUES:

[14] I identified the following issues as arising from this investigation:

1. Is the information at issue “personal information” as defined by section 2(1) of the *Act*?
2. Is the collection of the personal information in accordance with section 28(2) of the *Act*?
3. Is the notice of collection in accordance with section 29(2) of the *Act*?
4. Is the use of the personal information in accordance with section 31 of the *Act*?
5. Is the disclosure of the personal information in accordance with section 32 of the *Act*?
6. Is there a right of access to the personal information in accordance with section 36(1) of the *Act*?
7. Are there reasonable measures in place to protect the personal information as required by section 3(1) of Ontario Regulation 823 under the *Act*?
8. Does Newbury have proper retention periods in place for the personal information?

Issue 1: Is the information at issue “personal information” as defined by section 2(1) of the *Act*?

[15] The information at issue is the images of identifiable individuals collected by Newbury’s video surveillance system in the park.

[16] “Personal information” is defined in section 2(1) of the *Act*, in part, as follows:

“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,

⁵ <https://www.ipc.on.ca/guidance-documents/>

[17] Previous decisions by this office have held that information collected about identifiable individuals by video surveillance systems qualifies as “personal information” under the *Act*.⁶ Newbury does not dispute this.

[18] Further, the Surveillance Notice states:

Under the [*Act*], the recorded image of an individual is considered personal information.

[19] For these reasons, I find that the information at issue qualifies as “personal information” under section 2(1) of the *Act*.

Issue 2: Is the collection of the personal information in accordance with section 28(2) of the *Act*?

[20] Section 28(2) of the *Act* requires that Newbury’s video surveillance system collect personal information only in certain circumstances. This section states:

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.

[21] Newbury advised that the collection of the personal information at issue is necessary to the proper administration of a lawfully authorized activity. However, despite my requests, Newbury did not provide any further explanation as to why this is the case.

[22] In any event, the Surveillance Notice states:

The personal information collected by the use of the Village’s video surveillance cameras is collected under the authority of the *Municipal Act*, Section 11.

[23] Accordingly, it appears that Newbury takes the position that, pursuant to section 11(1) of the *Municipal Act, 2001* (the *Municipal Act*)⁷, the collection of the personal information at issue is necessary to the proper administration of a lawfully authorized activity.

[24] As a result, first, Newbury must show that the activity is lawfully authorized and, second, that the collection is necessary to the proper administration of that activity.

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

⁶ IPC reports MC07-68, MC10-2, MC13-46 and MC13-60.

⁷ S.O. 2001, c.25

A lower-tier municipality and an upper-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public, subject to the rules set out in subsection (4).

[26] In this matter, the activity at issue is Newbury's provision of the park, which pursuant to section 11(1) of the *Municipal Act*, Newbury appears to consider "necessary or desirable for the public".

[27] Therefore, I am satisfied that Newbury's operation of the park is a lawfully authorized activity.

[28] Next, I must consider whether the collection of the personal information through Newbury's video surveillance system is necessary to the proper administration of the park.

[29] In *Special Investigation Report* MC07-68, then Commissioner Ann Cavoukian set out what the necessity condition means as follows:

Based on the test established by my office, and adopted by the Court of Appeal, in order to satisfy the necessity condition, the institution must first identify the "lawfully authorized activity" in question, and second, it must demonstrate how the collection of personal information is "necessary," not merely helpful, to the achievement of this objective. In addition, this justification must be provided for all classes of personal information that are collected.⁸

[30] Moreover, in the context of video surveillance, the Guidelines discusses the importance of considering the necessity condition with respect to the means used to collect the personal information, as well as the sensitivity and the amount of the personal information collected.⁹

[31] Regarding the means used to collect the personal information, the Guidelines advise that it is important that institutions consider whether:

- the problem to be addressed by video surveillance is real, substantial and pressing;
- other less intrusive means of achieving the same goals have been considered and are substantially less effective than video surveillance or are not feasible; and

⁸ Also, see *Cash Converters Canada Inc. v Oshawa (City)* 2007 ONCA 502 at para.40.

⁹ Pages 6 through 10 of the Guidelines.

- the benefits of video surveillance substantially outweigh the reduction of privacy inherent in its use.

[32] Newbury advised that there is a real, substantial and pressing problem being addressed its video surveillance system in the park. Newbury explained that the purpose of the system is to “deter and detect crime and anti-social behavior such as theft, vandalism and unauthorized entry”¹⁰ and that, as indicated above, the decision to install the system was in response to several acts of vandalism of playground equipment in the park.

[33] Further, the Surveillance Policy discusses the reasons for the installation of the surveillance system in the park as follows:

COLLECTION OF PERSONAL USE:

1. Videotaping was introduced for the safety of park visitors, municipal property, to deter destructive acts such as vandalism and for by-law infractions.
2. The Village does not have full time staff to monitor the park daily.
3. Prior to the video cameras the park had been vandalized on a regular basis.
4. Prior to the video cameras dog owners have used the park as a dog run, allowing their animals to run free and defecate throughout the park.

[34] As less intrusive means to address the vandalism in the park, Newbury advised that it sent notices about the vandalism to each mailbox in Newbury.

[35] Regarding the benefits of video surveillance, Newbury advised that, after implementing the cameras, there has been less vandalism.

[36] With respect to the sensitivity of personal information, the Guidelines recommend that institutions consider the nature of the space under observation and the “closeness” of the surveillance. As indicated above, Newbury advised that it considered this and, as a result, pointed the cameras at playground equipment that had been vandalised.

[37] As to the amount of personal information being collected, the Guidelines recommend that institutions apply the principle of data minimization. This principle entails limiting the amount of information collected to that which is necessary to fulfill the purposes of the lawfully authorized activity.

¹⁰ See the “Policy Statement” section of versions one and two of the Surveillance Policy.

[38] In accordance with the data minimization principle, the Surveillance Notice advises that "camera locations and operation shall not provide visual access to areas not available to the general public, or to residential areas."

[39] At issue is whether Newbury has demonstrated that the collection of personal information by its video surveillance system is "necessary" and not merely helpful to the proper administration of its operation of the park. To determine whether Newbury has shown this, Privacy Complaint Reports MC13-46 and MC13-60 are informative.

[40] In Report MC13-46, Investigator Jeffrey Cutler was not satisfied that a school board's collection of personal information through its video surveillance system was necessary to the proper administration of a lawfully authorized activity. He stated:

I am concerned that there is no additional information to suggest that the guidelines regarding proposals for the installation of video surveillance outlined in Policy I-30 were followed by the Board prior to implementing the video surveillance system in the School. My concern is underscored by the Board's confirmation that it "... did not do a privacy impact assessment or other form of study in relation to the video surveillance program at the [S]chool." Indeed, the decision to employ video surveillance was a part of a broader initiative to implement video surveillance in all secondary schools without apparent detailed consideration to its necessity at this particular facility.

Without the benefit of a privacy impact assessment, security risk assessment or similar analysis, there is no information before me to suggest that the Board considered whether less intrusive means of deterrence, such as increased monitoring by staff, were ineffective or unworkable. Similarly, there is no information indicating that the Board considered the effects of surveillance system would have on personal privacy and whether the design and operation of the video surveillance system minimizes privacy intrusion to that which is necessary, as opposed to simply helpful.

In light of this, the implementation appears pre-emptive, with the only report of a security problem being thefts in the locker room (which are not covered by video surveillance in any case), and a general statement that thefts have not been more or less a problem than in previous years. Aside from this information, there is little material before me to indicate that there were demonstrative security issues at the School prior to the installation of video surveillance cameras.

[41] However, in Report MC13-60, Investigator Cutler was satisfied that a school board's collection of personal information through its video surveillance system was necessary to the proper administration of a lawfully authorized activity.

[42] He came to this conclusion based on a "School Security Incident Matrix" that

classified and listed incidents at the School prior to and after the implementation of video surveillance." Regarding this matrix, Investigator Cutler stated:

The list is comprised of 30 specific incidents over a period of four years, although only once incident occurred after the installation of video cameras. It also identifies loitering and illegal dumping on school property as frequent and ongoing issues. The incidents included intruders in the school building or property, assaults occurring on school property, drug use, theft and vandalism. In many of the instances the Matrix indicates that a police report was filed.

[43] Because of these verifiable and specific reports of incidents, he was satisfied that the matrix demonstrated that the "safety and security events at the School are exceptional in both their severity and frequency".

[44] In this matter, Newbury advised that its video surveillance system is being used to, primarily, prevent vandalism in its operation of the park. Further, Newbury believes that "video surveillance, when utilized with other security measures, is an effective means of ensuring the security and safety of our facilities, the individuals who use them, and the assets housed within them."¹¹

[45] As a result, in my view, using a video surveillance system is helpful in achieving Newbury's crime prevention, safety and security objectives in the park. Moreover, based on the above, it appears that Newbury has considered the necessity of the collection of the personal information in accordance with the Guidelines.

[46] However, in determining whether the collection of personal information by a video surveillance system is "necessary", I note the Guidelines explanation of the risks of video surveillance to privacy as follows:

While video surveillance may help to increase the safety of individuals and the security of assets, it also introduces risks to the privacy of individuals whose personal information may be collected, used and disclosed as a result of the technology. The risk to privacy is particularly acute because video surveillance may, and often does, capture the personal information of law-abiding individuals going about their everyday activities. In view of the broad scope of personal information collected, special care must be taken when considering whether and how to use this technology.

[47] In this matter, as evidence of the problems that its video surveillance system will address, Newbury provided me with only a copy of the By-law Officer's report relating to the Animals at Large By-Law infraction notice that it issued to the complainant.

¹¹ See the Surveillance Notice.

Moreover, Newbury advised that it did not conduct a privacy impact assessment¹², or similar analysis, before or after installing this system, which could have considered whether intrusive measures could have accomplished the same goals, and whether the particular manner in which the surveillance was implemented was necessary.

[48] However, as indicated above, Newbury advised that there is a history of vandalism in the park that is being addressed by its video surveillance system. Further, according to Newbury, mailing notices to its residents to address this problem has not been as effective as its video surveillance system, which is collecting personal information in accordance with the data minimization principle. Moreover, the park comprises a relatively small area of Newbury¹³ and, in my view, is a semi-private space in which individuals, generally, would have a lower expectation of privacy.¹⁴

[49] Based on the aforementioned reasons, I find that Newbury has shown that the benefits of its video surveillance system outweighs the reduction of privacy inherent in its use. In addition, I am satisfied that Newbury has demonstrated that the collection of personal information by its video surveillance system is “necessary” and not merely helpful to the proper administration of its operation of the park.

[50] Accordingly, I am satisfied that this collection is necessary to the proper administration of a lawfully authorized activity. Therefore, I find that the collection of the personal information by Newbury’s video surveillance system is in accordance with section 28(2) of the *Act*.

Issue 3: Is the notice of collection in accordance with section 29(2) of the *Act*?

[51] Because Newbury’s video surveillance system collects personal information from individuals, generally, section 29(2) of the *Act* requires that they receive notice of this collection. This section states:

If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and

¹² For information about privacy impact assessments, please see the IPC’s “Planning for Success: Privacy Impact Assessment Guide”.

¹³ [http://newbury.ca/Grass Tender & Map.pdf](http://newbury.ca/Grass_Tender_&_Map.pdf).

¹⁴ See page 9 of the Guidelines.

(c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

[52] To give individuals the notice required by section 29(2), the Guidelines suggest that institutions make the notice available and easily accessible on their website. The Guidelines also recommend that, at the perimeter of the monitored areas and at key locations within these areas, institutions place signs with a clear, language-neutral graphical depiction of the use of a video surveillance that also contain basic information clarifying that video surveillance is being used.¹⁵

[53] With respect to notice of the collection, the Surveillance Policy states:

NOTIFICATION OF SIGN POSTED:

A notice is posted in the Municipal Services Office indicating that the cameras are videotaping at the park and the notice is posted on Newbury's web site.

[54] Further, the Surveillance Notice is available and accessible online.¹⁶ This notice, in part, states:

The Village of Newbury has installed cctv (closed circuit television) security monitoring cameras in Old Boys Park to promote public safety and awareness and to assist in crime prevention.

...

Information obtained through video monitoring shall only be used for security and law enforcement purposes.

...

If you have any questions on this, please contact the Village of Newbury at 22910 Hagerty Road or call 519-693-4941.

...

The personal information collected by the use of the Village's video surveillance cameras is collected under the authority of the *Municipal Act*, Section 11. The information is used for the purpose of promoting public safety and reducing crime.

¹⁵ This recommendation assumes that a high percentage of the individuals whose personal information is being collected are able to read the signs (that is, are not visually disabled).

¹⁶ http://newbury.ca/video_surveillance_notice.pdf.

[55] With respect to signs indicating the presence of video surveillance, the Surveillance Policy states:

SIGN LOCATION AND INFORMATION:

All signs posted near the cameras will notify the public of the presence of video surveillance equipment and shall identify legal authority for collection of personal information and provide title, address & tele. number of contact person who can answer questions about the system.

[56] Further, Newbury confirmed that, in the park, a sign was placed on the camera booth and the gate. My review of this sign found that it shows a language-neutral graphical depiction of the use of a video surveillance and states:

CCTV (closed circuit television)

RECORDED FILM

IMAGING IS BEING TAKEN TO ASSIST IN

CRIME PREVENTION AND TO PROMOTE

PUBLIC SAFETY AND AWARENESS

This system is owned and operated by

THE VILLAGE OF NEWBURY

22910 HAGERTY ROAD

519-693-4941

[57] Although, Newbury has placed signs at the park to notify individuals that this area is under surveillance, the Surveillance Notice does not provide them with the title of an officer or employee who can answer an individual's question(s) about the collection, which is inconsistent with the Surveillance Policy.

[58] For this reason, I find that the notice of collection of the personal information is not in accordance with section 29(2)(c) of the *Act*. Therefore, I find that Newbury's notice of collection is not in accordance with section 29(2).

[59] Accordingly, I will recommend that Newbury provide notice of the collection as required by this section, as well as the Surveillance Policy.

Issue 4: Is the use of the personal information in accordance with section 31 of the *Act*?

[60] Section 31 of the *Act*, generally, prohibits Newbury's use of the personal information collected by its video surveillance system unless one of the exceptions

under this section applies.

[61] Section 31 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*.

[62] Further, with respect to the use of personal information in the context of video surveillance, the Guidelines provide the following explanation:

In the context of video surveillance, this means that as a general rule, institutions may only use personal information collected by means of video surveillance for the purpose of the video surveillance program or for a consistent purpose. Use of the information for other, unrelated purposes would not generally be permitted. When information collected for one purpose is used for another, unrelated purpose this is often called 'function creep.'

[63] The Surveillance Policy, which makes reference section 31, states:

USE OF PERSONAL INFORMATION under Section 31:

1. If the person who is identified in the tape authorizes its use.
2. Used for the purpose for which it was obtained.
3. If requested by law enforcement.

[64] In this matter, in my view, section 31(b) of the *Act* sets out the most applicable exception that would allow Newbury to use the personal information. To see whether this section applies, first, the purpose for which the personal information was obtained or compiled must be determined, and, second, whether the use of this information has taken place for either the same purpose or a consistent purpose must be determined.

[65] As indicated above, personal information collected by Newbury's video surveillance system "is used for the purpose of promoting public safety and reducing crime" and that it "shall only be used for security and law enforcement purposes." In addition, the signs in the park state that the "recorded film imagining is being taken to

assist in crime prevention and to promote public safety and awareness.”

[66] Newbury explained that it uses the information to seek out those who have committed unlawful acts in the park (for example, vandalism) and that video footage is not used unless it becomes aware that a crime has taken place.

[67] Based on the purposes for which Newbury uses the personal information collected by its video surveillance system, I am satisfied that it is used for the same purpose for which it was obtained or compiled.

[68] Therefore, I find that Newbury’s use of the personal information is in accordance with section 31(b) of the *Act* and, therefore, I find that the use of the personal information is in accordance with section 31 of the *Act*.

Issue 5: Is the disclosure of the personal information in accordance with section 32 of the *Act*?

[69] According to the Surveillance Policy, Newbury discloses the personal information collected by its video surveillance system as follows:

DISCLOSURE OF PERSONAL INFORMATION under Section 32:

1. In accordance with Part 1 of the MFIPPA.
2. If the person who is identified in the tape authorizes disclosure[.]
3. Disclosed for the purpose [for which] it was obtained.
4. Disclosed to an institution or law enforcement in Canada to assist with an investigation.

[70] Section 32 of the *Act* prohibits the disclosure of personal information by Newbury unless one of the exceptions described in paragraphs (a) to (l) under this section applies. This section, in part, 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;

...

(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;

[71] Based on the circumstances in which Newbury may disclose personal information collected by its video surveillance system, I find that they are in accordance with sections 32(a),(b), (c) and (g) of the *Act*.

[72] For this reason, I find that the disclosure of the personal information is in accordance with section 32 of the *Act*.

Issue 6: Is there a right of access to the personal information in accordance with section 36(1) of the *Act*?

[73] Section 36(1) of the *Act* gives individuals a right of access to their personal information collected by Newbury's video surveillance system. This section states:

Every individual has a right of access to,

(a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and

(b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

[74] Further, in the context of video surveillance, when granting access to personal information in response to an individual's request, the Guidelines advise that an institution's "video surveillance system should include the ability to remove or redact information from the video footage to protect exempted information."

[75] As indicated above, the Surveillance Policy provides that disclosure of personal information collected by its video surveillance system can occur under section 32 of the *Act* "in accordance with Part I", that is, under section 32(a) of the *Act*.

[76] Section 32(a) allows the disclosure of personal information in accordance with Part I of the *Act*, which governs freedom of information and access to records in the custody or control of an "institution" within the meaning of the *Act*.

[77] Of note, in this matter, Newbury granted the complainant access to the video footage that he requested.

[78] Based on the aforementioned, I find that there is a right of access to the personal information in accordance with section 36(1) of the *Act*.

[79] However, as Newbury advised that its surveillance system is not able to black out, blur or remove other sensory information from video footage, I will recommend that Newbury take steps to ensure that exempted information is protected when granting individuals access, in full or in part, to their personal information.

Issue 7: Are there reasonable measures in place to protect the personal information as required by section 3(1) of Ontario Regulation 823 under the Act?

[80] Section 3(1) of Ontario Regulation 823 (O Reg 823) requires that the Newbury "ensure that reasonable measures to prevent unauthorized access to [individuals' information] are defined, documented and put in place, taking into account the nature of the records to be protected." This requirement "applies throughout the life-cycle of a given record, from the point at which it is collected or otherwise obtained, through all of its uses, and up to and including its eventual disposal."¹⁷

[81] In Investigation Report I93-044M, then Assistant Commissioner Ann Cavoukian stated the following about the term "reasonable measures" in section 3(1) of O Reg 823:

The determination of whether reasonable measures had been put into place hinges on the meaning of "reasonable" in section 3(1) of Regulation 823, R.R.O. 1990, as amended. Black's Law Dictionary defines reasonable as:

Fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view ... Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable.

Thus, for reasonable measures to have been put into place would not have required a standard so high as to necessitate that every possible measure be pursued to prevent unauthorized access. In our view, the measures identified above are consistent with Black's definition of "reasonable" -- appearing to be fair and suitable under the circumstances.

[82] Moreover, in Privacy Complaint Report PR16-40, then Investigator Lucy Costa stated the following about section 4(1) of Regulation 460 (which is the provincial access/privacy law equivalent of section 3(1) of O Reg 823):

From the way this section of the regulation is written, it is clear that it does not prescribe a "one-size-fits-all" approach to security. It does not set out a list of measures that every institution must put in place

¹⁷ Privacy Complaint Report MI10-5

regardless of circumstance. Instead, it requires institutions to have “reasonable” measures and ties those measures to the “nature” of the records to be protected. It follows that the same security measures may not be required of all institutions. Depending on the nature of the records to be protected, including their sensitivity, level of risk and the types of threats posed to them, the required measures may differ among institutions.

[83] Regarding video surveillance, generally, security measures should include:

- administrative measures, such as the development of clear policies and procedures regarding use and disclosure;
- technical measures, such as ensuring that images are encrypted and that robust controls are in place that ensure only those who need the information can access it (this includes logging and auditing); and
- physical measures, such as ensuring secure locations for video monitors and image storage.¹⁸

[84] Further, the Guidelines advise that, “in the context of video surveillance, security involves ensuring the confidentiality, integrity and availability of the footage captured by the system.” To that end, the Guidelines set out measures that institutions may take.¹⁹

[85] Newbury provided this office with relevant information regarding the security measures in place for its video surveillance system. Some of these details are not set out in this report because disclosing them might compromise the effectiveness of these measures.

[86] Regarding administrative measures, Newbury has the Surveillance Policy in place, which makes it clear that Newbury’s Municipal Clerk is responsible for “the implementation, administration, and evaluation of the Municipality’s Video Surveillance Policy and Procedures”, and for ensuring that Newbury’s video surveillance system is used “exclusively for lawful purposes”.

[87] Regarding technical measures, the Surveillance Policy states:

VIEWING OF TAPES

¹⁸ Page 3 of the IPC Fact Sheet: Video Surveillance available at: <https://www.ipc.on.ca/wp-content/uploads/2016/11/2016-00-09-video-surveillance.pdf>

¹⁹ Page 17 of the Guidelines

Only designated staff will have access to the video tape. Designated staff will only view the tape if there has been an incident to warrant viewing of the tape.

[88] Newbury advised that its Clerk Treasurer and By-Law Officer are the only designated staff that have access to the video footage collected by the surveillance system. Newbury also advised that the footage is password protected and that only these staff members have the password. Further, the Surveillance Policy requires that "all staff who have been designated to view the tapes must sign a Confidentiality Agreement."

[89] In addition, regarding access to video footage by law enforcement, the Surveillance Policy makes Newbury's Municipal Clerk responsible for ensuring that "police are authorized to view, or have access to a video record if requested in accordance with the applicable law."

[90] With respect to live viewing of video footage, Newbury explained that, in order for designated staff to do so, they must go to the park, unlock the camera booth and watch it on the video monitor in the booth. However, in my view, it is unlikely that this staff would view footage in real time because, as indicated above, Newbury does not use video footage unless it becomes aware that a crime has taken place.

[91] When disclosing personal information in accordance with the *Act*, the Guidelines advise that "it is important that disclosures be done in a manner that protects the privacy and security of the personal information." To that end, the Guidelines recommend that institutions maintain an auditable log of each disclosure and ensure that this log contains certain information.

[92] Newbury advised that it keeps a "Reviewing Video Taping Log Book" to record access to video footage collected by its surveillance system. This log book records the name of the person who accessed the footage, the time in, the time out and the purpose for reviewing the footage.

[93] With respect to system review and audits, the Guidelines recommend that institutions regularly audit the roles, responsibilities and practices of its video surveillance program regularly to ensure that they comply with its policies and procedures.

[94] To this end, the Surveillance Policy makes Newbury's Municipal Clerk responsible for ensuring that this policy "is reviewed from time to time."

[95] Regarding physical measures, according to the Surveillance Policy, "Municipal employees and as well the Park and Recreation Committee are allowed access to the booth. When the booth is not being used, the doors are locked and unavailable to the public."

[96] Further, Newbury advised that there is an "Employee Only" sign on the booth

and that any video footage removed from the booth is stored in Municipal Service's vault.

[97] In the circumstances of this complaint, based on the above, I am satisfied that Newbury has put in place reasonable measures to safeguard the footage collected by its video surveillance system. Therefore, I find that there are reasonable measures in place to protect the personal information as required by section 3(1) of O Reg 823 under the *Act*.

Issue 8: Does Newbury have proper retention periods in place for the personal information?

[98] Section 30(1) of the *Act* requires that the Newbury keep the personal information collected by its video surveillance system "for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information."

[99] To that end, section 5 of O Reg 823 prescribes the following period:

An institution that uses personal information shall retain it for the shorter of one year after use or the period set out in a by-law or resolution made by the institution or made by another institution affecting the institution, except if,

(a) the individual to whom the information relates consents to its earlier disposal; or

(b) the information is credit or debit card payment data.

[100] Together, section 30(1) and section 5 of O Reg 823 establish a default minimum one-year retention period for used personal information,²⁰ subject to the exceptions set out in section 5 of O Reg 823.

Used Video Footage

[101] Where video footage has been used, it would be subject to the one-year minimum retention period indicated above. The Guidelines advise that, "in the context of video surveillance, personal information is used whenever footage that contains images of individuals or other identifiable information is accessed or disclosed." It also advises that, "simply viewing a live feed does not represent a 'use' of personal information".

[102] Regarding used video footage, the "Video Recorded Retention Period" section of

²⁰ Privacy Complaint Reports MC10-2, MC13-46, MC13-60 and MC17-32.

the Surveillance Policy advises that this footage "will be kept for one year and then disposed of by way of erasing the information on the tape". However, the "Viewing Of Tapes" section advises that "[u]sed tape will be erased after one month."

[103] With respect to this discrepancy, Newbury confirmed that it keeps used video footage for one year. For this reason, I am satisfied that Newbury's retention period for used personal information is in accordance with the minimum one-year retention period.

[104] Therefore, I find that the retention of used personal information is in accordance with section 30(1) of the *Act*.

[105] However, I will recommend that Newbury amend the Surveillance Policy to resolve the discrepancy in it relating to the retention of used video footage.

Unused Video Footage

[106] Where video footage has not been used, the Guidelines recommend that its retention period be limited as follows:

Recorded information that has not been used is routinely erased according to a standard schedule. Under the standard schedule, the retention period for unused information is limited to the amount of time reasonably necessary to discover or report an incident that occurred in the space under surveillance.²¹

[107] The Guidelines also advise that "when erasing or deleting recorded information, whether used or unused, it is critical that the information and old storage devices are disposed of in such a way that the personal information cannot be reconstructed or retrieved."²²

[108] Regarding unused video footage, the "Video Recorded Retention Period" section of the Surveillance Policy advises that "[o]ther parts of the videotaping that is not kept [that is, used] is erased after one month.

[109] Although, Newbury did not provide me with an explanation as to why it chose a one month schedule for erasing unused video footage, there is nothing before to indicate that this timeframe is unreasonable in the circumstances.

[110] For this reason, I am satisfied that the retention of the unused personal information collected by Newbury's video surveillance system is in accordance with the Guidelines.

²¹ Page 10 of the Guidelines.

²² Page 11 of the Guidelines.

[111] Therefore, I find that Newbury has proper retention periods in place for the personal information.

Consultation with stakeholders

[112] The *Act* does not require that institutions consult with anyone about the collection of personal information where such collection is necessary to the proper administration of a lawfully authorized activity.

[113] However, the Guidelines recommends that individuals who might be affected by video surveillance should be consulted as follows:

The use of video surveillance affects all the individuals who end up moving within the space under observation. Therefore, prior to using video surveillance, and where feasible to do so, [an institution] should identify those who reasonably may be affected by the video surveillance and consult with them as to the program's necessity and impact.²³

[114] The matter of consultation raises two questions. The first question is: who are the stakeholders? For this question, "context is important, and in each circumstance where the installation of cameras is considered the questions should be asked who may be reasonably affected by the video surveillance? And, is consultation feasible?²⁴

[115] The second question is: were the stakeholders adequately consulted?²⁵ Consultation is more than merely announcing the decision to implement video surveillance.²⁶

[116] As indicated above, Newbury did not conduct a privacy impact assessment²⁷ before it installed the cameras in the park. Further, Newbury advised that it did identify who the stakeholders are or anyone who reasonably may be affected by the cameras prior to their installation.

[117] Although not required by the *Act*, going forward, I would encourage Newbury to consult with stakeholders, or anyone who reasonably may be affected by the cameras in the park.

CONCLUSION:

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

²³ Page 19 of the Guidelines.

²⁴ MC13-60.

²⁵ Ibid.

²⁶ Ibid and MC13-67.

²⁷ See the IPC's "Planning for Success: Privacy Impact Assessment Guide.

1. The information at issue is "personal information" as defined by section 2(1) of the *Act*.
2. The collection of the personal information is in accordance with section 28(2) of the *Act*.
3. The notice of collection is not in accordance with section 29(2) of the *Act*.
4. The use of the personal information is in accordance with section 31 of the *Act*.
5. The disclosure of the personal information is in accordance with section 32 of the *Act*.
6. There is a right of access to the personal information in accordance with section 36(1) of the *Act*.
7. There are reasonable measures in place to protect the personal information as required by section 3(1) of Ontario Regulation 823 under the *Act*.
8. Newbury has proper retention periods in place for the personal information.
9. Newbury did not consult with stakeholders.

RECOMMENDATIONS:

Based on the above conclusions, I make the following recommendations:

1. I recommend that Newbury, provide all of the notice requirements under section 29(2) of the *Act* on the Surveillance Notice and clearly mark it "Notice of Collection".
2. As Newbury is unable to black out, blur or remove other sensory information from footage collected by its video surveillance system, I recommend that, when granting individuals access, in full or in part, to their personal information collected by the surveillance system, Newbury take steps to ensure that exempted information is protected.
3. As the Surveillance Policy indicates that Newbury both retains used video footage collected by its surveillance system for one year and erases it after one month, I recommend that Newbury resolve this discrepancy by amending the Surveillance Policy in a manner that is consistent with the *Act* and this report.
4. Within six months of receiving this report, Newbury should provide this office with proof of compliance with the above recommendations.

Newbury has reviewed this report and agreed to implement the above recommendations. Accordingly, within six months of receiving this report, Newbury should provide this office with proof of compliance with these recommendations.

Original signed by: _____

John Gayle
Investigator

_____ June 29, 2021