ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on the Investigation into Complaint Regarding the Destruction of Records by a Local Government Body

December 17, 1999

County of Smoky Lake

Investigation #1689

The Complaint

On August 30, 1999, the Complainant hand-delivered a box of records to the Office of the Information and Privacy Commissioner. The Complainant claimed that these records were found in a recycling bin, and requested an investigation into this matter.

One of the concerns identified by the Complainant was that the County of Smoky Lake may be disposing records prior to the implementation of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act") in an attempt to evade future access requests.

Application of the Freedom of Information and Protection of Privacy Act

Section 98(1) of the FOIP Act states:

98(1) This Act, except section 86(1)(e) and (2), comes into force on Proclamation.

Section 86(1)(e) and (2) of the FOIP Act were proclaimed in force effective June 1, 1994 and reads as follows:

- 86(1) A person must not wilfully
- (e) destroy any records subject to this Act with the intent to evade a request for access to the records
- 86(2) A person who violates subsection (1) is guilty of an offence and liable to a fine of not more than \$10,000.

Although the access and protection of privacy provisions of the FOIP Act did not extend to the County of Smoky Lake until October 1, 1999, section 86(1)(e) and (2) were in force at the time of the complaint.

Under section 51(1)(a) of the FOIP Act, the Commissioner may conduct investigations to ensure compliance with any provision of this Act. Accordingly, the Commissioner authorized an investigation into this matter. This report outlines the findings and recommendations of the investigation.

Investigation

The investigation included meetings and discussions with staff of the County of Smoky Lake; all councillors of the County of Smoky Lake; representatives of a local newspaper; and a number of discussions with the Complainant.

The following is a summary of the key events based on information received during the investigation:

- On May 13, 1999, a member of the public found County records in the town's recycling bin. The individual contacted a reporter and the two went to the recycling bin to obtain a sampling of the records.
- The records taken from the recycling bin were placed in a box, and the reporter gave the box to the editor of a local newspaper that same day.
- On August 11, 1999, the editor passed the box of records to another member of the public who subsequently forwarded the box to the Complainant.

Issues

To determine whether section 86(1)(e) of the FOIP Act applies, the investigation must find that:

- 1. records were destroyed; and
- 2. the destruction was willful and with the intent to avoid requests for access to those records.

The Records at Issue

The box provided to the Office of the Information and Privacy Commissioner contained records that could be grouped into the following categories:

- Payroll information;
- Accounts transactions (e.g. accounts payable, accounts receivable);
- Budget reports:
- Assessment, tax and billing information.

Information contained on the records include the following:

- Names, addresses, earnings, deductions, pensionable service, and social insurance numbers of individual employees of the County of Smoky Lake;
- Individual councillors' expenses and income tax deductions;
- Payments to businesses and specific individuals;
- Names and addresses of property owners; and

• Names of individuals billed by the County of Smoky Lake.

The records date from 1998 to 1999.

Why were the Records in the Recycling Bin?

County staff advised they had cleaned the County Office's computer room in May 1999. As part of the clean-up, staff set aside the following material for disposal: copies of old land use development plans, copies of the old *Municipal Government Act*, and computer printouts and reports containing such information as payroll, taxes, etc. County staff indicated the computer printouts and reports were copies and not originals.

Previously, the County of Smoky Lake would have disposed of its records by burning them. However, the County of Smoky Lake had discussed adopting a practice of recycling the records, as it would be more environmentally friendly. As a result, the records from the computer room were placed in the town's recycling bin in May 1999.

Were the Records Destroyed?

The County of Smoky Lake was provided with copies of records randomly selected from the box provided to the Office of the Information and Privacy Commissioner, and asked to provide evidence that the information on these records could be reproduced or were retained by the County Office.

The County of Smoky Lake provided hard copies of each of the records. Although some records showed different date or time of printing, the information contained on the hard copy records was identical to the records from the recycle bin.

Conclusion

The investigation concludes that section 86(1)(e) and (2) of the FOIP Act did not apply to the disposal of County records in the recycle bin. Evidence indicates the records disposed were copies. The original copies of the records are retained at the County Office, and could be accessible if a request for access under the FOIP Act was made. Therefore, this Office can take no further action on this matter.

Closing Comments and Recommendations

The County of Smoky Lake acknowledged it erred in placing records containing personal information in the recycle bin. As the FOIP Act did not apply to the County of Smoky Lake at the time of the incident, it could not be in violation of Part 2 of the FOIP Act.

However, there can be no doubt that this form of disposal is not appropriate. By placing these records in the recycle bin, the County of Smoky Lake exposed its employees and members of the public to the risk that their personal information may be misused or abused.

Since the incident, the County of Smoky Lake has undertaken measures to ensure that this situation does not occur again. These measures include a paper shredder in the County office to dispose of small amounts of paper, locked bins to store documents for shredding, and a contract with a bonded company to shred documents and transitory records that are no longer required.

However, there is also a need for the County of Smoky Lake to educate and ensure its employees understand their responsibilities under the FOIP Act to protect individuals' privacy. Therefore, it is recommended that the County of Smoky Lake consider the implementation of training and other communication strategies to its employees on the implications of the FOIP Act.

During the investigation, some individuals alleged that the County of Smoky Lake breached its record retention and disposition by-law when it disposed of County records in the recycle bin. It should be clarified that the destruction procedures outlined in the County by-law (i.e. statement of disposition, affidavit of witness for disposal of County records, etc.) are applicable only for the destruction of original records/documents and not for duplicate copies of these records.

Another issue raised during the investigation concerned records left at the old site when the County Office was relocated in 1989. These records are presently retained in the basement of the County library, and appear to be accessible to the public. There is some dispute as to whether these records contain personal information. It is recommended that the County of Smoky Lake review these records to determine those records that should be retained and those that should be disposed of.

Submitted by,

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