

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on Investigation into Complaint
Regarding Disclosure of Personal Information**

April 27, 2001

City of Calgary

Investigation #2074

I. THE COMPLAINT

[para 1.] On January 3, 2001, the Commissioner received a complaint that the City of Calgary ("the Public Body") had disclosed personal information in violation of Part 2 of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act").

II. BACKGROUND

[para 2.] On Friday, October 20, 2000, the Complainant forwarded a letter ("the Letter") to the Office of the Calgary City Clerk regarding the Complainant's decision to withdraw from consideration for reappointment to the Calgary Police Commission.

[para 3.] Copies of the Letter were distributed to the Mayor and aldermen during the in camera session of the Organizational Meeting on Monday, October 23, 2001.

[para 4.] Portions of the Letter appeared in a Calgary Herald article on October 24, 2000. The Letter was referenced again in the Calgary Herald on October 25th and October 26th.

[para 5.] On October 26, 2000, the Complainant wrote to the Calgary City Clerk, who is the head of the Public Body for the purposes of the FOIP Act, requesting an investigation into the disclosure of the Letter to the Calgary Herald.

[para 6.] On November 1, 2000, the Public Body's FOIP Coordinator advised the Mayor and the aldermen in writing that a complaint had been received by the Public Body regarding the disclosure of the Letter to the media. Subsequently, the Public Body's FOIP Coordinator interviewed the Mayor and aldermen individually on this matter.

[para 7.] On November 7, 2000, the Calgary Herald reported that the Public Body was investigating the disclosure of the Letter.

[para 8.] On December 4, 2000, the Calgary City Clerk notified the Mayor and aldermen in writing on the outcome of the Public Body's investigation.

[para 9.] On December 7, 2000, the Public Body's FOIP Coordinator wrote to the Complainant to advise that one alderman admitted to reading portions of the Letter over the telephone to a journalist. However, the Public Body's investigation could not identify who released a copy of the Letter to the Calgary Herald as all persons interviewed denied such action.

[para 10.] The Public Body's investigation concluded the disclosure of the Letter to the Calgary Herald was not authorized under section 38 of the FOIP Act and was a breach of privacy. The Public Body's investigation also found a second potential privacy breach regarding the disclosure of the privacy complaint to the Calgary Herald.

[para 11.] Although there was one admission of a verbal disclosure, the Complainant believed that someone also released a copy of the Letter to the Calgary Herald. This belief motivated the Complainant to file a privacy complaint with the Commissioner.

III. INFORMATION AT ISSUE

[para 12.] The information at issue is the Letter, which contains the Complainant's name, business address, business telephone number, business fax number, and personal views and opinions. The information is "personal information" as defined by section 1(1)(n) of the FOIP Act.

IV. ISSUE

[para 13.] The issue for my investigation is:

Was personal information disclosed in violation of Part 2 of the FOIP Act?

[para 14.] There are two disclosures at issue:

1. The initial disclosure of the Letter that lead to the October 24, 2000 article in the Calgary Herald; and
2. A second disclosure relating to the privacy complaint filed by the Complainant that was reported in the Calgary Herald on November 7, 2000.

V. INVESTIGATION FINDINGS AND ANALYSIS

A. Interviews Conducted

[para 15.] I interviewed all Members of Council who attended the October 23, 2000 in camera meeting. I confirmed that Alderman Kerr did not attend the in camera meeting and was, in fact, away from the office when these events occurred. I also interviewed the Calgary City Clerk and a number of employees of the Office of the City Clerk.

B. Initial Disclosure

[para 16.] Alderman Colley-Urquhart admitted she read portions of the Letter over the telephone to a journalist ("the Journalist") of the Calgary Herald. Alderman Colley-Urquhart could not recall when she talked to the Journalist. She indicated the conversation occurred either on the afternoon of October 23rd or the next day.

[para 17.] The first article regarding the Letter appeared in the Calgary Herald on the morning of October 24th. The article states: "*Following a blistering letter of resignation from a police commissioner, Ald. Diane Colley-Urquhart says the province should step in...*". Therefore, I conclude that Alderman Colley-Urquhart's conversation with the Journalist occurred on October 23rd.

[para 18.] Alderman Colley-Urquhart said the Journalist did not know about the Letter prior to their telephone conversation. Alderman Bronconnier, Alderman Erskine and Alderman Higgins said

that the Journalist contacted them after the in camera meeting and read portions of the Letter to them. The Mayor and remaining aldermen advised me they either had no contact with the Journalist about the Letter or were contacted by the Journalist after the October 24th article.

[para 19.] I conclude that Alderman Colley-Urquhart's verbal disclosure was the "initial" disclosure that resulted in the October 24, 2000 article.

B. Complainant's Concern on Release of Letter

[para 20.] It is not necessary for this office to investigate whether the verbal disclosure was further accompanied by a hard copy release of the Letter. However, given the Complainant's belief and concern that someone released a copy of the Letter to the Journalist, I considered this matter in the investigation.

[para 21.] The Journalist contacted the Complainant and read portions of the Letter over the telephone. The Complainant was under the impression that the Journalist had obtained a copy of the Letter.

[para 22.] Alderman Bronconnier, Alderman Erskine and Alderman Higgins said they thought the Journalist had a copy of the Letter as the Journalist read portions of the Letter to them over the telephone.

[para 23.] All individuals interviewed claimed they did not release a copy of the Letter to the Calgary Herald. Alderman Colley-Urquhart claimed that the Journalist asked for a copy of the Letter, but that she refused to release a copy of the Letter. She said she had no idea how the Journalist obtained a copy of the Letter.

[para 24.] I believe there is a possibility that the Journalist may not have had a hard copy of the Letter when preparing the October 24th article. My reasons are as follows:

- Alderman Colley-Urquhart said the Journalist did not know about the Letter prior to their October 23rd telephone conversation. Alderman Bronconnier said the Journalist read portions of the Letter to him over the telephone in the early evening of October 23rd. Therefore, if the Journalist had obtained a copy of the Letter, it would have been after the telephone conversation with Alderman Colley-Urquhart and before the evening of October 23rd.
- Alderman Colley-Urquhart denied releasing a hard copy of the Letter to the Journalist. The other aldermen interviewed also denied releasing a hard copy of the Letter to the Journalist. This meant that the Journalist would have had to obtain a copy of the Letter from a source other than an alderman within a specific time period.

Distribution of the Letter was restricted to those in attendance at the in camera session. The Complainant did not send a copy of the Letter to the Calgary Police Commission until after the October 24th article appeared in the Calgary Herald.

The only other individuals who had seen copies of the Letter at that time were the Chief Executive Officer, the Calgary City Clerk, and some employees of the Office of the Calgary City Clerk. The City employees advised me they understand the confidentiality requirements of their positions. They also indicated they have no interest or stake in the issues raised in the October 24, 2000 article. In my view, there is no benefit for these individuals to disclose a copy of the Letter to the Journalist.

- Alderman Colley-Urquhart said she read portions of the Letter to the Journalist over the telephone. However, she could not recall which specific portions were read to the Journalist. The Letter is not a lengthy document. The majority or the entire Letter could have been read over the telephone.
- Alderman Colley-Urquhart said the Journalist could have taped their conversation. Alternatively, the Journalist could have made notes or used shorthand to record their conversation.
- In comparing the portions of the Letter printed in the October 24th article and the actual copy of the Letter, I noted a number of minor discrepancies such as some words were replaced with other words, some were omitted and some were added. In my view, there are two possible explanations for these discrepancies: either the Journalist was exercising some editorial liberties or the Journalist was referring to handwritten notes or a tape as opposed to the actual copy of the Letter.

Alderman Erskine advised me that he had provided a written statement to the Journalist on October 24th after the article on the Letter was printed. This statement was printed in the Calgary Herald on October 25th. Alderman Erskine provided me with a copy of his written statement.

I noted that Alderman Erskine's statement was printed verbatim in the October 25th article. The exception is that the Journalist used lower case letters on such words as "Commission" while Alderman Erskine used the capital "C". I noted that this was also the case with the Letter where the Journalist used the lower case "c" for words such as "Commission" and "Chair" while the Complainant used the capital "C". Unlike the portions of the Letter that were printed, there were no discrepancies such as replacement, omission or addition of words in the public printing of Alderman Erskine's statement.

[para 25.] In my opinion, it is not necessary for the Journalist to have a hard copy of the Letter to write the October 24th article if significant portions or the entire Letter were read to the Journalist.

[para 26.] Whether the Journalist did nor did not have a hard copy of the Letter when preparing the October 24th article is irrelevant to the issue of this investigation. The October 24th article established that a disclosure occurred. Alderman Colley-Urquhart's admission confirmed she disclosed the Complainant's personal information.

C. Second Disclosure

[para 27.] All individuals interviewed denied disclosing information to the Calgary Herald about the privacy complaint filed by the Complainant.

[para 28.] Although the investigation could not substantiate the source of the second disclosure, the disclosure was reported in the Calgary Herald on November 7, 2000. As the Complainant did not advise the Journalist that a privacy complaint had been lodged, it would seem most likely that the source of the second disclosure came from someone within the Public Body.

VI. ISSUE: WAS PERSONAL INFORMATION DISCLOSED IN VIOLATION OF PART 2 OF THE FOIP ACT?

[para 29.] Section 38(1) of the FOIP Act sets out the provisions under which a public body may disclose personal information. I find that the disclosures of the Complainant's personal information to the Calgary Herald did not fall under any of the disclosure provisions of the FOIP Act.

Therefore, I conclude the disclosures are a violation of Part 2 of the FOIP Act and a breach of the Complainant's privacy.

VII. CONCLUDING COMMENTS

[para 30.] Alderman Colley-Urquhart said the Letter was not marked "Confidential". She also said there were no policies regarding in camera meetings or materials distributed during in camera meetings. She believes there is a need for standardized classification of documents so that everyone is clear as to what information can or cannot be disclosed after meetings.

[para 31.] All individuals interviewed confirmed that the Letter was distributed during the in camera session of the Organizational Meeting. Although the Letter was not marked "confidential", the other aldermen indicated they understood the Letter was confidential given its contents and its distribution at an in camera meeting. The other aldermen and City employees indicated they understood that "in camera" meant that discussions and material distributed during in camera would not be disclosed publicly.

[para 32.] The Calgary City Clerk remembered that a group of students attended the public portion of the Organizational Meeting on October 23rd and that the Mayor made a point of explaining to the students the reason and purpose of in camera for the benefit of these students.

[para 33.] The Calgary City Clerk indicated that written policies on in camera meetings seemed redundant as the *Municipal Government Act* sets out the circumstances under which meetings are closed to the public (section 197(2) of the *Municipal Government Act*).

[para 34.] The other aldermen advised that the Calgary City Clerk and the City Solicitor have "hammered" and "lectured" them on the Public Body's responsibilities under the FOIP Act.

[para 35.] The Public Body has a responsibility to assure members of the public that their personal information is protected and used appropriately. As an elected official of the Public Body, Alderman Colley-Urquhart shares in that responsibility. Alderman Colley-Urquhart has offered to apologize for breaching the Complainant's privacy. I encourage her to do so.

Submitted by

Marylin Mun
Portfolio Officer