



STAFF REPORT ACTION REQUIRED

Collection of Personal Information by City Licensed Second-Hand and Salvage Yard Dealers

Date:	December 17, 2009
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2010\Cluster B\MLS\LS10002

SUMMARY

This report addresses the issues raised by the Information and Privacy Commissioner of Ontario (IPC) regarding municipal by-laws which require the collection, recording and production of personal information from sellers of goods to Toronto licensed second-hand and salvage yard dealers.

This report recommends that the provisions in the City of Toronto Municipal Code, Chapter 545, Licensing, as they relate to second-hand dealers, salvage yard dealers and dealers in old gold and other precious metals and jewellery, be amended to bring the Code into compliance with the Order issued to the City of Ottawa by the IPC and the more recent complaint filed with the IPC regarding the City of Toronto.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards Division recommends that:

1. The City of Toronto Municipal Code, Chapter 545, Licensing, be amended by adopting the amendments in Appendix "A", attached to this report;
2. The City Solicitor be directed to prepare the necessary bill to give effect to the recommendations in this report, effective immediately;
3. This report be forwarded to the next meeting of the Police Services Board for their information;

4. A working group comprised of City staff from Municipal Licensing and Standards, Legal Services, Corporate Access and Privacy Office and representatives from the Toronto Police Service be established to review what further amendments to the City of Toronto Municipal Code, Chapter 545, Licensing, concerning the collection of personal information are appropriate under the powers provided to the City of Toronto under the *City of Toronto Act, 2006*, and the IPC's Privacy Guidelines for Municipalities regulating Businesses Dealing in Second-hand Goods; and
5. The working group report back to the Licensing and Standards Committee, with draft amendments to City of Toronto Municipal Code, Chapter 545, Licensing.

Public notice has been given in a manner prescribed in the Toronto Municipal Code Chapter 162, Notice, Public.

Financial Impact

The recommendations will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

As a result of a complaint received on July 6, 2007, regarding the information collection practices of the City of Ottawa the IPC conducted an investigation into the City of Ottawa's by-law requirements for personal information collection as they pertain to second-hand and salvage yard dealers. The investigation resulted in the issuance by the IPC of Order MO-2225 to the City of Ottawa on September 11, 2007. This Order required the City of Ottawa to amend its licensing by-law to remove the requirement for these businesses to collect personal information and to destroy personal information previously collected under the by-law.

This report recommends that similar provisions in the City of Toronto Municipal Code, Chapter 545, Licensing, as they relate to second-hand dealers, salvage yard dealers and dealers in old gold and other precious metals and jewellery, be immediately amended to prevent the possibility of the City of Toronto being subjected to an IPC Order similar to Order MO-2225. This report further recommends the establishment of a working group to study further amendments to the City of Toronto Municipal Code, Chapter 545, Licensing, to provide for collection of personal information for purposes of law enforcement and as necessary for the purposes authorized by the *City of Toronto Act, 2006*.

ISSUE BACKGROUND

On July 6, 2007, the Office of the Information and Privacy Commissioner of Ontario (IPC) received correspondence from a complainant raising concerns regarding the information collection practices of the City of Ottawa and the Ottawa Police Service. Specifically, the complainant expressed the view that the Police's collection of information relating to individuals who had sold items to second-hand goods shops was in contravention of *MFIPPA*. The complainant's correspondence also made reference to a by-law of the City of Ottawa.

The IPC opened privacy complaint files with respect to both the City of Ottawa and the Ottawa Police Service. As a result the IPC issued Order MO-2225 directing the City of Ottawa and the Ottawa Police Service to cease requiring that second-hand goods shops collect certain pieces of personal information from individuals selling used goods to the shops. In addition, the IPC's Order required that those pieces of personal information that had been previously collected by the shops under the City's by-law be destroyed.

The IPC found that the collection of personal information required by the by-law could not be justified under Section 28(2) of *MFIPPA*. Section 28(2) of *MFIPPA* provides three conditions under which a municipality may collect, or require the collection of, personal information. These conditions are:

1. the collection of personal information is expressly authorized by statute;
2. the collection of personal information is used for the purposes of law enforcement; or
3. the collection of personal information is necessary to the proper administration of a lawfully authorized activity.

The City of Ottawa was unable to justify to the IPC that the collection and use of personal information contained in its by-law is permissible under any of the three conditions contained in Section 28(2) of *MFIPPA*. In particular, the *Municipal Act, 2001*, as it read at the time of passage of the City of Ottawa's by-law, did not provide express authorization for the collection of personal information, nor did it permit the City of Ottawa to pass a business licensing by-law for the purposes of "law enforcement." City of Ottawa was required to justify the collection of personal information as "necessary" for a lawfully authorized purpose. The only "lawfully authorized purpose" which was available to justify the by-law was the City of Ottawa's ability to impose conditions on licensed businesses for a purpose permitted under the *Municipal Act, 2001*. Subsection 150(2) of the *Municipal Act, 2001*, as it read on the date of the enactment of the City of Ottawa by-law, only permitted the exercise of licensing powers for the purposes of health and safety; nuisance control; or, consumer protection.

The IPC determined that the provisions of the by-law requiring the collection of personal information were passed for a “consumer protection” purpose. While, evidence as to the helpfulness of the collected information to law enforcement was provided to the IPC, because the provisions in question were enacted under the previous municipal legislation, the City of Ottawa was required to illustrate that the information being collected was necessary for the limited purposes of consumer protection and not for assisting in law enforcement. Unfortunately, the City of Ottawa was unable to provide sufficient evidence to show that the collection of personal information was necessary for the purpose of consumer protection. As a result, the City of Ottawa had insufficient evidence to support the only basis available for the collection of personal information permitted under Section 28(2) of *MFIPPA*, and the IPC ordered the collected information destroyed.

In reaching its decision in Order MO-2225, the IPC considered the Ontario Court of Appeal’s decision in the case *Cash Converters Canada Inc. v Oshawa (City)*, (2007), 86 O.R. (3d) 401 (ON. C.A.). In *Cash Converters*, the Court of Appeal dealt with a City of Oshawa by-law regulating second-hand goods shops and requiring the collection of personal information, which was quite similar to the City of Ottawa by-law. As was the case, in Order MO-2225, the by-law was not upheld, because, the municipality was prohibited from passing the by-law for “law enforcement” purposes and had insufficient evidence to support the necessity of collecting the evidence for the authorized purpose of “consumer protection.”

The by-laws in both *Cash Converters*, and Order MO-2225, also suffered from additional procedural deficiencies, such as not providing the notice of collection required by s. 29(2) of *MFIPPA*. Outside of the aforementioned issues, these procedural deficiencies would have prevented the by-laws reviewed in *Cash Converters*, and Order MO-2225 from complying with *MFIPPA*.

It is important to note, that the Court of Appeal in *Cash Converters*, specifically mentions that a different analysis regarding compliance with s. 28(2) of *MFIPPA* in relation to the use of the information for law enforcement purpose may be required for by-laws enacted under municipal legislation which does not limit business licensing powers to the three narrow purposes of: Health and safety; Nuisance control; and, Consumer protection. The provisions of the *City of Toronto Act, 2006*, have broadened the scope of powers of the City of Toronto with respect to business licensing. Therefore, the scope of personal information which may be collected in connection to Second-hand good sellers will need to be re-examined in light of this legislative change. The IPC has issued a document entitled “Privacy Guidelines for Municipalities regulating Businesses Dealing in Second-hand Goods,” which provides assistance to municipalities in outlining the relevant considerations for municipalities in justifying collection of personal information related to the regulation of Second-hand Good Sellers.

The IPC Privacy Guidelines for Municipalities regulating Businesses Dealing in Second-hand Goods require that any by-law be enacted in the least privacy invasive manner. As a result, a comprehensive “privacy impact assessment” of the entire collection and use of the personal information is a practical requirement prior to enacting any such by-law.

COMMENTS

The City of Toronto Municipal Code, Chapter 545, Licensing, contains provisions similar to those sections of the City of Ottawa’s licensing by-law which require the collection, recording and production of personal information from sellers of goods to Toronto licensed second-hand, salvage yard dealers and dealers in old gold and other precious metals and jewellery. The provisions of the City of Toronto Municipal Code, Chapter 545, Licensing, were enacted under predecessor Municipal legislation, and as a result are limited to purposes of “consumer protection.”

It appears that the City of Toronto did not engage in a comprehensive privacy review prior to enacting these provisions. As a result, there is no certainty that the City will have sufficient evidence to satisfy the onus of “being necessary” for the purposes of consumer protection. Additionally, there is no evidence that the procedural elements of the collection will comply with requirements of Part II of *MFIPPA*.

Therefore, the City of Toronto may not be able to establish that the provisions of the City of Toronto Municipal Code, Chapter 545, Licensing, dealing with the collection and distribution of personal information, are in compliance with *MFIPPA*. As a result, the City of Toronto Municipal Code should be amended to cease such practices of collection and distribution of personal information, until such time as any collection of personal information, as permissible under the expanded powers provided under the *City of Toronto Act, 2006*, may be conducted in compliance with the principles established in the *Cash Converters* decision, IPC Order MO-2225, and the IPC “Privacy Guidelines for Municipalities regulating Businesses Dealing in Second-hand Goods.”

In addition to this, the City Clerk received a letter from the IPC, dated November 17th, 2009, regarding Complaint MC09-44 (see Appendix B to this report). This arose due to concerns expressed to the IPC by a representative of the Canadian Association of Recycling Industries (CARI) regarding provisions of the City of Toronto Municipal Code, Chapter 545, Licensing, which contravene *MFIPPA*. Therefore, in order to prevent the IPC from issuing an order similar to that issued by the IPC to the City of Ottawa, it is recommended that the Municipal Code, as they relate to second-hand dealers, salvage yard dealers and dealers in old gold and other previous metals and jewellery, be amended to bring the code into compliance and remove the provisions which contravene *MFIPPA* to forestall the issuance of such an order to the City of Toronto.

Subsequent to the receipt of the correspondence from the IPC, regarding Complaint MC09-44, the Toronto Police Service (TPS) issued a Routine Order (see Appendix C to this report) to all unit commanders advising them to cease the routine practice of

collecting the sheets from the registers provided by ML&S containing personal information of sellers of goods to these Toronto licensed businesses.

City of Toronto Legal Services and the City of Toronto Corporate Access and Privacy Office have been consulted in the preparation of this report.

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ATTACHMENTS

Appendix A: Proposed By-law Amendments
Appendix B: IPC Correspondence – Complaint MC09-44
Appendix C: Toronto Police Services – Routine Order

Appendix A

Proposed By-law Amendments

To amend City of Toronto Municipal Code Chapter 545, Licensing, respecting Second-Hand Dealers, Salvage Yard Dealers and Dealers in Old Gold and Other Precious Metals and Jewellery

1. Article XXIII of Toronto Municipal Code Chapter 545, Licensing, is amended by deleting § 545-285 and substituting the following:

§ 545-285. Register of goods received.

The Municipal Licensing and Standards Division shall furnish free of charge to every person to whom this article relates a book known as the “register,” in which shall be entered in the English language, written in ink in a plain, legible hand, a record of all goods received or taken in exchange or otherwise obtained, either at the licensee’s place of business or elsewhere. The entry must be made at the time the goods are received or immediately thereafter, and shall include, in addition to the date on which and the hour at which the goods are received, a full description of the article or articles including the serial and model number, if any, and the manufacturer’s name, if any, and if purchased, the price paid therefore. Goods of every description redeemed on pawn tickets purchased or taken in exchange by licensed dealers shall be treated as purchased and shall be so entered. In entering bicycles, the name of the maker and the manufacturer’s number thereof shall, in every case, be recorded, if known or ascertainable.

2. Article XXIII of Toronto Municipal Code Chapter 545, Licensing, is amended by deleting § 545-288 and substituting the following:

§ 545-288. Suspicions concerning attempts to sell stolen goods to be reported.

Every person to whom this article relates, or any person acting as a servant or agent of any such person, shall upon any person offering to him or her goods or articles of any kind, which he or she has cause to suspect have been stolen or otherwise unlawfully obtained, report the facts including the removal or defacement or apparent tampering with the serial numbers or model numbers, if any, on such goods or articles to the nearest police station or police officer.

3. Article XXIV of Toronto Municipal Code Chapter 545, Licensing, is amended by deleting § 545-293 and substituting the following:

§ 545-293. Register of goods received.

The Municipal Licensing and Standards Division shall furnish free of charge to every such person a book known as “The Old Gold or Old Jewellery Register,” in which shall be entered in the English language written in ink in a plain, legible hand, a record of all old gold or other precious metals or old jewellery or other similar articles purchased or taken in exchange. The entry must be made at the time of purchase or exchange or immediately thereafter, and shall include, in addition to the date and hour of the purchase or exchange, a full description of the old gold or other precious metals or such article or articles, and the price paid therefore.