



STAFF REPORT ACTION REQUIRED

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

Date:	April 12, 2010
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2010\Cluster B\MLS\Ls10015

SUMMARY

As directed by this Committee, the purpose of this report was to further consider the impact of amending the Toronto Municipal Code, Chapter 545, Licensing, regarding the requirement for the collection of personal information by city licensed second-hand goods and salvage yard dealers.

The Legal Services Division and the Corporate Access and Privacy (CAP) Office were both consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards 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 Working Group conduct public consultations with respect to collection of information in relation to the second-hand goods and salvage yard industry and report back to the Licensing and Standards Committee in one-year's time with respect to whether further action is required;
3. This report be forwarded to the next meeting of the Police Services Board for their information; and

4. The City Solicitor be authorized to prepare the necessary Bills for introduction in Council to implement the above recommendations, subject to such stylistic and technical changes to the draft bills as may be required.

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

Financial Impact

There is no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At the January 14, 2010 Licensing and Standards Committee meeting discussed a report entitled, "Collection of Personal Information by City Licensed Second-Hand and Salvage Yard Dealers" (see link below).

<http://www.toronto.ca/legdocs/mmis/2010/ls/decisions/2010-01-14-ls26-dd.htm>

The Committee's decision was as follows;

1. Referred Recommendations 1-3 in the report (December 17, 2009) back to the Executive Director, Municipal Licensing and Standards for further consideration with a request to report back to the Committee at its meeting on April 29, 2010.
2. In the interim, requested that 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
3. Requested the Working Group to report back to the Licensing and Standards Committee, with draft amendments to City of Toronto Municipal Code, Chapter 545, Licensing.

ISSUE BACKGROUND

Privacy concerns with respect to the collection and electronic transmission of personal information were raised in the case of *Cash Converters Canada Inc. v. Oshawa (City)*, [2007] 86 O.R. (3d) 401 (ON.C.A.) ("*Cash Converters*")

The Ontario Court of Appeal ruled in the case of *Cash Converters* that the City of Oshawa did not demonstrate that the new licensing bylaw requiring the collection and automatic disclosure of personal information with respect to the sale of second-hand goods, complied with the requirements of *Municipal Freedom of Information and Protection of Privacy Act*, ("MFIPPA").

The Office of the Information and Privacy Commissioner of Ontario (IPC) received a complaint in 2007 regarding the collection and automatic disclosure of personal information to Ottawa Police Service required by the City of Ottawa's Licensing Bylaw. The investigation commenced by the IPC in relation to the abovementioned complaint resulted in the IPC issuing Order MO-2225. The IPC's investigation failed to determine a reasonable justification for the City of Ottawa to be collecting this information and automatically transferring it to the Ottawa Police Service. Order MO-2225 was issued 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 goods to the shops, and having that information collected on behalf of the Police. Additionally, any information that had been previously collected was to be destroyed.

COMMENTS

In Ontario, the collection, use, or disclosure of personal information by municipal institutions is regulated by *MFIPPA*.

This collection of personal information needs to be balanced with an individual's right to the privacy of such information, and the need for municipal "institutions" to collect, use or disclose personal information for legitimate purposes. Municipalities and municipal police services are considered institutions governed by *MFIPPA*.

The IPC is responsible to oversee compliance with this legislation.

Under *MFIPPA*, the IPC has a mandate to offer comment on the privacy protection implications of proposed programs, conduct public education programs, and provide information regarding Ontario privacy legislation to institutions.

Cash Converters Canada Inc v. Oshawa (City), and Order MO-2225

In response to the *Cash Converters* decision and IPC Order MO-2225, some municipalities, such as the City of Mississauga have interpreted these outcomes as requiring the repealing of sections of their licensing bylaws that required the collection of personal information. Other municipalities, such as the cities of Hamilton, Brampton, and Greater Sudbury have continued with the practice of requiring the collection of personal information.

In all cases, the contentious issue was municipal regulation which required the collection of personal information, and automatic electronic transmittal of this information to law enforcement organizations, or into an electronic database accessible to law enforcement organizations, without the presence of an active law enforcement investigation.

Additionally, the ruling in *Cash Converters Canada*, stated that the City of Oshawa was not precluded from enacting a new second-hand goods dealers' licensing bylaw with provisions regarding the collection and transmission of personal information that could be justified under s. 28(2) of *MFIPPA*.

The municipal by-laws addressed 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 bylaws reviewed in *Cash Converters*, and Order MO-2225 from complying with *MFIPPA*.

As a result of these outcomes, the City of Toronto has considered on numerous occasions the prudence of amending provisions in Chapter 545, Licensing relating to the collection and disclosure of personal information by second-hand goods and salvage yard dealers.

Privacy and the Regulation of Businesses Dealing in Second-hand Goods

In 2007 the IPC released a document entitled, "Privacy Guidelines for Municipalities Regulating Businesses Dealing in Second-hand Goods" in order to provide assistance to municipalities in outlining relevant considerations for justifying the collection of personal information related to the regulation of second-hand goods sellers. It states specifically in this document that, "Second-hand goods by-laws that **do not** provide for the collection and automatic disclosure of personal information by businesses **do not** attract privacy concerns."

Furthermore, in a recent communication between the CAP office and the IPC, the IPC clarified that the privacy complaint regarding the collection of personal information by second-hand and salvage yard dealers was specific to concerns regarding the automatic disclosure of the collected personal information to the Toronto Police Service (TPS). As the TPS has, upon the request of the IPC, stopped the practice of automatically collecting personal information from licensees, this issue has been resolved. However, if the TPS were to begin to routinely collecting this information from licensees again, or having licensees otherwise automatically transfer information to them, the IPC would likely deem it necessary to take action with respect to the requirements imposed on licensees by the provisions of Chapter 545, Licensing.

The outstanding issue appears to be the IPC's concern regarding the potential that Chapter 545 could be considered to impose a requirement for personal information to be *automatically* transferred to the TPS, in the absence of a law enforcement purpose.

However, this concern should not be seen as implying that the TPS cannot gain access to information collected from second-hand and salvage yard dealers for the purposes of an active investigation. Section 32(g) of MFIPPA states that, “An institution shall not disclose personal information in its custody or under its control except if the 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;”. The City has established policies in regards to providing the TPS and other law enforcement institutions access to information.

Minor amendments to the Chapter 545, Licensing, with regards to the collection and disclosure of personal information from second-hand and salvage yard dealers are recommended to address concerns with respect to the disclosure of this information to the TPS, as well as establishing a notification process of such collection to sellers.

Role of the Working Group

The working group will convene, and based on the discussions, decide that with the recommended amendments, Chapter 545, Licensing, as it pertains to second-hand goods and salvage yard dealers does not require further consideration.

The recommended amendments to Chapter 545, Licensing, do not limit the ability of the TPS, to gather personal information during the course of a specific investigation or otherwise within the scope of their law enforcement powers, for example, as found under the *Police Services Act*.

Secondly, discussions with the TPS should centre on their need for this information, the value it provides regarding their investigations of stolen property and providing quantitative evidence to support this purpose. To enact new bylaws under the *City of Toronto Act, 2006*, the City will need to establish a factual and rational connection between the need to collect personal information and valid municipal objectives of the City.

Should the TPS confirm that this information is critical and needs to be transmitted to them irrespective of an active investigation, consideration should be given to establishing new municipal regulations regarding the collection of personal information for law enforcement purposes, and a comprehensive privacy impact assessment (PIA) would be necessary and required in order to identify potential privacy risks of new or re-designed programs or services and eliminate those risks.

Consultation with industry stakeholders is important to determine if the current requirements of Chapter 545 adequately reflect the needs of the industry and expectations of the public with respect to the collection of personal information from sellers by licensees.

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Jim Hart
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ATTACHMENTS

Appendix A: Proposed Bylaw Amendments, Chapter 545, Licensing, Article XXIII,
Salvage Yards; Second Hand Goods

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.

Every person to whom this article relates, shall maintain a book known as the “Second-Hand Goods Register”, into 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. 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. The entry must be made at the time the goods are received or immediately thereafter, and shall include:

- A. the date on which and the hour at which the goods are received,
- B. a full description of the article or articles including:
 - (1) the serial and model number, if any, and
 - (2) the manufacturer’s name, if any, and
- C. in the case of bicycles, the name of the maker and the manufacturer’s number thereof shall, in every case, be recorded, if known or ascertainable;
- D. the name, address, full particulars of identification and description of the person from whom the goods are received;
- E. if purchased, the price paid therefor, and
- F. in the case of goods delivered or conveyed by motor vehicle licensed by any Province of Canada or any State of the United States of America, the provincial or state licence number of the motor vehicle delivering or conveying the goods.

2. Article XXIII of Toronto Municipal Code Chapter 545, Licensing, is amended by deleting § 545-286 and substituting the following:

§ 545-286. Inspection of Second-Hand Goods Register.

It shall be the duty of the person requiring a licence under the provisions of this chapter to ensure that the Second-Hand Goods Register is not mutilated or destroyed; to deliver, or cause to be delivered, to such place as the Executive Director or his or her designate requires not later than 9:00 in the morning of

every weekday, a transcript of the information required to be entered in the Second-Hand Goods Register by §545-285A, B, C, with relation to the goods received on the previous business day, accurately copied from the register on the blank forms supplied for that purpose; to permit the inspection of the Second-Hand Goods Register by law enforcement personnel authorized by the Executive Director for law enforcement purposes, at all times during business hours; and to permit the removal of the Second-Hand Goods Register at any time for inspection by law enforcement personnel authorized by the Executive Director for law enforcement purposes, or for use in the courts if necessary. The person licensed shall not be held liable for neglecting to enter goods received while the Second-Hand Goods Register is so absent from his or her premises.

3. Article XXIII of Toronto Municipal Code Chapter 545, Licensing, is amended by deleting § 545-287 and substituting the following:

§ 545-287. Notice of Collection Required.

Every person to whom this article relates shall post, in a location and manner approved by the Executive Director, a sign approved by the Executive Director, stating that the name, address, full particulars of identification and description of the person from whom the goods are being recorded for the purposes of disclosure, upon request, to law enforcement personnel authorized by the Executive Director for use in relation to law enforcement purposes, the legal authority for the collection of this information, as well as the title, business address and business telephone number of an employee of the City authorized by the Executive Director to answer questions about the collection.

4. 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 known to him or her, including but not limited to, 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.

5. 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.

Every persons who for hire or gain deal in old gold or other precious metals and in old jewellery or other articles for the purpose of smelting the same and recovering the gold therefrom, shall maintain 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:

- A. the date and hour of the purchase or exchange,
- B. a full description of the old gold or other precious metals or such article or articles
- C. the price paid therefor,
- D. the name, address and description of the person from whom the purchase or exchange was made, and
- E. in the case of the old gold or other precious metals or such article or articles delivered or conveyed by motor vehicle licensed by any Province of Canada or any State of the United States of America, the provincial or state licence number of the motor vehicle delivering or conveying the goods.

6. Article XXIV of Toronto Municipal Code Chapter 545, Licensing, is amended by inserting the following as § 545-293.1:

§ 545-293.1. Inspection of The Old Gold or Old Jewellery Register.

It shall be the duty of the person requiring a licence under the provisions of this chapter to ensure that the Old Gold or Old Jewellery Register is not mutilated or destroyed, to deliver, or cause to be delivered, to such place as the Executive Director or his or her designate requires not later than 9:00 in the morning of every weekday, a transcript of the information required to be entered in the register by §§545-293A, B, C, with relation to the goods received on the previous business day, accurately copied from the register on the blank forms supplied for that purpose; to permit the inspection of the Old Gold or Old Jewellery Register by law enforcement personnel authorized by the Executive Director for law enforcement purposes, at all times during business hours; and to permit the removal of the Old Gold or Old Jewellery Register at any time for inspection by law enforcement personnel authorized by the Executive Director for law enforcement purposes, or for use in the courts if necessary. The person licensed shall not be held liable for neglecting to enter goods received while the Old Gold or Old Jewellery Register is so absent from his or her premises.

7. Article XXIV of Toronto Municipal Code Chapter 545, Licensing, is amended by inserting the following as § 545-293.2:

§ 545-293.2. Notice of Collection Required.

Every person to whom this article relates shall post, in a location and manner approved by the Executive Director, a sign approved by the Executive Director, stating that the name, address, full particulars of identification and description of the person from whom the goods are being recorded for the purposes of disclosure, upon request, to law enforcement personnel authorized by the

Executive Director for use in relation to law enforcement purposes, the legal authority for the collection of this information, as well as the title, business address and business telephone number of an employee of the City authorized by the Executive Director to answer questions about the collection.

8. Article XXIV of Toronto Municipal Code Chapter 545, Licensing, is amended by inserting the following as § 545-293.3:

§ 545-293.3. 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 known to him or her to the nearest police station or police officer.