



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-64

Appeal M-9200047

The Corporation of the Town of Sioux Lookout



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ORDER

BACKGROUND:

The Corporation of the Town of Sioux Lookout (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to "a copy of the complete report submitted to the 1988-1991 Town Council along with the 1991-1994 Town Council by [a named individual]" and "all reports reviewed by Council which assisted them in passing [a number of] motions".

The Town denied access to the responsive record, claiming section 6(1)(b) of the Act, and the requester appealed the decision. After receiving notification of the appeal, the Town added section 14 as a new exemption claim with respect to certain portions of the record.

The record consists of an 82-page document with attachments, entitled "Report to Council - January 14/91 - November 24/91".

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the Town's decision was sent to the Town, the appellant, and one individual whose interests could be affected by disclosure of the record (the affected person). Written representations were received from the Town only.

ISSUES/DISCUSSIONS:

The issues arising in this appeal are as follows:

- A. Whether any of the information contained in the record qualifies as "personal information", as defined in section 2(1) of the Act.
- B. Whether the discretionary exemption provided by section 6(1)(b) of the Act applies to the record.
- C. Whether the discretionary exemption provided by section 14 of the Act applies to the record.
- D. If the record contains the personal information of the appellant and the answer to Issues B and/or C is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether any of the information contained in the record qualifies as "personal information", as defined in section 2(1) of the Act.

Section 2(1) of the Act reads, in part, as follows:

"personal information" means recorded information about an identifiable individual,

The record contains information about salaries and wages, and the employment-related conduct of several employees of the Town.

I have examined the record and, in my view, pages 15 and 26-28 of the record contain the personal information of the appellant only; the information on pages 1-2, 6-12, 14, 16-18, 25, 30-33, 35-36, 38-39, 41-42, 44-46, 48, 52-56, and 58-59 is properly considered the personal information of both the appellant and other identifiable individuals; and pages 5, 13, 19-20, 22-23, 29, 34, 37, 40, 43, 47, 49-51, 57, 60-61, 64, 66-67, 69, 71, 73-74 and 77-81 of the record contain the personal information of identifiable individuals other than the appellant.

Pages 3-4, 21, 24, 62-63, 65, 68, 70, 72, 75-76 and 82 do not contain personal information of any identifiable individual.

ISSUE B: Whether the discretionary exemption provided by section 6(1)(b) of the Act applies to the record.

Section 6(1)(b) of the Act reads as follows:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

In order to qualify for exemption under section 6(1)(b), the Town must establish that:

1. a meeting of a council, board, commission or other body or a committee of one of them took place; **and**
2. that a statute authorizes the holding of this meeting in the absence of the public; **and**
3. that disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting.

The Town claims that section 6(1)(b) applies because the meeting of the committee of the whole Town Council was authorized to be held in-camera pursuant to section 55(1) of the Municipal Act. Section 55(1) reads as follows:

The meetings, **except meetings of a committee including a committee of the whole**, of every council and of every local board as defined by the Municipal Affairs Act, except boards of commissioners of police and school boards, shall be open to the public, and no person shall be excluded therefrom except for improper conduct. [Emphasis added]

The Town submits that the information contained in the record was discussed during an in-camera meeting of the committee of the whole Town Council held on December 4, 1991. The Town further submits that the contents of the record formed the substance of the deliberations of that meeting.

I have reviewed the record and a copy of the agenda for the December 4, 1991 meeting. The agenda clearly indicates that the record was discussed as one of the in-camera items of the meeting of the committee of the whole Town Council, and that the public was excluded from this part of the meeting. In my view, the requirements for exemption under section 6(1)(b) of the Act have been established: a meeting of the committee of the whole Town Council was held on December 4, 1991; section 55(1) of the Municipal Act authorizes the committee of the whole to meet in-camera; and the Town has provided sufficient evidence to establish that disclosure of the record would reveal the actual substance of deliberations of this in-camera meeting, in the circumstances of this case.

I must now determine whether section 6(2)(b) of the Act applies to the record. This section reads as follows:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

in the case of a record under clause (1)(b), the subject-matter of the deliberations has been considered in a meeting open to the public;

I have not been provided with any evidence to indicate that the subject matter of the record has been considered in a meeting open to the public, and, accordingly, I find that section 6(2)(b) does not apply.

Therefore, I find that the record qualifies for exemption under section 6(1)(b) of the Act.

Because I have found that the entire record qualifies for exemption under section 6(1)(b), it is not necessary for me to consider the possible application of section 14.

ISSUE D: If the record contains the personal information of the appellant and the answer to Issues B and/or C is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.

In Issues A and B, I found that pages 1-2, 6-12, 14-18, 25-28, 30-33, 35-36, 38-39, 41-42, 44-46, 48, 52-56, and 58-59 contain the personal information of the appellant, and that the record qualifies for exemption under section 6(1)(b) of the Act.

Section 36(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 38 provides a number of exemptions to this general right of access, including section 38(a), which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 9, 10, 11, 12, 13 or 14 would apply to the disclosure of that personal information; [emphasis added]

Section 38(a) provides the Town with the discretion to refuse to disclose to the appellant his own personal information where section 6 applies. I have reviewed the Town's reasons for exercising discretion in favour of denying access to the record, and I find nothing improper in the circumstances of this appeal.

ORDER:

I uphold the Town's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

November 17, 1992