



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-40

Appeal M-910337

Township of Mara



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ORDER

BACKGROUND:

The Township of Mara (the Township) received a request for a copy of an estimate of the cost to complete a subdivision agreement. The Township obtained the estimate to assist it in determining whether all or part of a letter of credit, provided by the developer of the subdivision as security for the installation of services and subdivision agreement compliance, could be released. The requester is the President of an association of property owners in the subdivision.

The Township denied access to the record pursuant to section 7(1) of the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester appealed the Township's decision.

The record was obtained and examined by the Appeals Officer. The record consists of a three-page preliminary estimate "of costs related to the various items of work remaining" to be completed. The record was prepared by an engineering firm retained by the Township.

Mediation efforts were not successful. As a result, notice that an inquiry was being conducted to review the Township's decision was sent to the Township, the appellant and the engineering firm. Accompanying the notice was a report prepared by the Appeals Officer, intended to assist the parties in making representations to this office concerning the subject matter of the appeal. Representations were received from the Township and the appellant.

The sole issue arising in this appeal is whether the Township properly applied the discretionary exemption provided by section 7(1) of the Act. Section 7(1) states:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

In order to satisfy the requirements of section 7(1), the Township must establish that disclosure of the record would reveal advice or recommendations of an officer or an employee or a consultant retained by the Township.

In its representations, the Township states:

The sole purpose of obtaining the information provided in the correspondence ... was to provide advise [sic] to council with respect to discussions on security requirements for a subdivision. Although the document does not contain a clause setting out a specific recommendation, the general nature of the entire document is a recommendation to Council with respect to the action being considered ...

...

The recommendation is the summary of costs which were provided to assist council in determining the amount of security required ... [The] [r]ecommendation is clearly set out with the provision of the dollar value. Council simply had to compare it with the amount of security.

Section 7 of the Municipal Freedom of Information and Protection of Privacy Act is similar in wording to section 13 of the Freedom of Information and Protection of Privacy Act (the provincial Act). In Order 94, dated September 22, 1989, former Commissioner Sidney B. Linden discussed the general purpose of the section 13 exemption in the provincial Act. At page 5, he stated:

... in my view, section 13 was not intended to exempt all communications between public servants despite the fact that many can be viewed, broadly speaking, as advice or recommendations. ... [S]ection 1 of the Act stipulates that exemptions from the right of access should be limited and specific. Accordingly, I have taken a purposive approach to the interpretation of subsection 13(1) of the Act. In my opinion, this exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making and policy-making.

Commissioner Linden commented further on the nature of advice in Order 118, dated November 15, 1989. On page 4, he stated:

In my view, "advice", for the purposes of [sub]section 13(1) of the Act, must contain more than mere information. Generally speaking, advice pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

I believe that Commissioner Linden's views about section 13 of the provincial Act are equally applicable to section 7 of the municipal Act and I adopt them for the purposes of this appeal.

In my view, disclosure of the record would not reveal advice or recommendations. The record contains information which the Township intended to use when considering whether to release the security provided by the developer. The record does not contain a "suggested course of action" to the Township and, accordingly, the exemption does not apply.

ORDER:

1. I order the Township to disclose the record to the appellant within 35 days following the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
2. The Township is further ordered to advise me in writing within five days of the date on which disclosure was made. Such notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
3. In order to verify compliance with the provisions of this order, I order the Township to provide me with a copy of the record which was disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: _____
Tom Wright
Commissioner

_____ September 25, 1992