



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

# **ORDER M-87**

**Appeal M-9200180**

**The Corporation of the City of Cambridge**



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# ORDER

## BACKGROUND:

The Corporation of the City of Cambridge (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the past file, including drawings, and drawings submitted by Cambridge Kiwanis Village Non-Profit Housing Corporation (Cambridge Kiwanis) to obtain a new building permit with respect to a 174 unit condominium project. The City denied access to the record pursuant to sections 10(1)(a) and (c) of the Act. The requester appealed the City's decision.

Mediation of the appeal was not successful, but the record at issue in the appeal was limited to a 418 page document titled "TECHNICAL AUDIT AND INVENTORY PRESTON HEIGHTS NON-PROFIT HOUSING 340, 355 AND 360 LINDEN DRIVE CAMBRIDGE, ONTARIO" (the Audit). Notice that an inquiry was being conducted to review the City's decision was sent to the appellant, the City, the consultants who prepared the Audit and Cambridge Kiwanis. Written representations were received from the City and Cambridge Kiwanis.

The sole issue in this appeal is whether the mandatory exemptions provided by sections 10(1)(a) and (c) apply to the Audit. In its representations, the City indicated that it no longer objects to the release of the Audit and is prepared to disclose it to the appellant. Cambridge Kiwanis objects to disclosure of the Audit.

Sections 10(1)(a) and (c) state:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

Each part of the following three-part test must be satisfied in order for a record to be exempt from disclosure under sections 10(1)(a) or (c) of the Act:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the types of harm specified in (a), (b) or (c) of section 10(1) will occur.

[Orders 36 and M-10]

### **Part One**

The Audit was prepared by a firm of consulting engineers, and contains written, photographic and schematic descriptions and representations of the condominium buildings. It identifies and records the apparent deficiencies in the construction of the buildings and, in some instances, proposes corrective measures. In my view, the Audit consists of technical information and, therefore, the first part of the test has been met.

### **Part Two**

On a careful review of the Audit, it is clear that it was supplied to the City.

The City has not submitted representations respecting the confidentiality of the Audit. Cambridge Kiwanis submits that "... the information is private and confidential ..." but provides no support or explanation for this assertion.

There is no indication on the face of the Audit to indicate that the information contained in it has been supplied to the City in confidence, whether explicitly or implicitly. I find, therefore, that the requirements of the second part of the test have not been met.

### **Part Three**

The City has not made representations respecting the harms enumerated in sections 10(1)(a) and (c).

Cambridge Kiwanis submits that it has no desire to be involved in any disputes nor to be involved with or part of a lawsuit against the City. It has, however, not provided any representations relevant to the harms enumerated in sections 10(1)(a) and (c).

I am not satisfied that disclosure of the information contained in Record 1 could reasonably be expected to result in either of the harms described in section 10(1)(a) or 10(1)(c). Neither the City nor Cambridge Kiwanis have provided me with sufficient evidence to establish a reasonable expectation of either of these harms and, therefore, the third part of the test has not been met.

In summary, parts two and three of the test for exemption under sections 10(1)(a) and (c) of the Act have not been met, and the Audit, therefore, does not qualify for exemption under either of these sections.

**ORDER:**

1. I order the City to disclose the Audit 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. In order to verify compliance with the provisions of this order, I order the City to provide me with a copy of the Audit disclosed to the appellant pursuant to Provision 1, **only** upon my request.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ February 17, 1992