



ORDER M-189

Appeal M-9200421

Municipality of Metropolitan Toronto



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Municipality of Metropolitan Toronto (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a large number of documents produced in 1988, 1989 and 1990 pertaining to solid waste disposal proposals for Metropolitan Toronto.

The Municipality disclosed to the requester all of the documents requested, except for a "long list" of potential landfill sites that was referred to in a 1988 report of the Works Committee of the Municipality. The Municipality denied access to this information pursuant to sections 10, 11 and 14 of the Act. The requester appealed the Municipality's decision.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the Municipality's decision was sent to the appellant, the Municipality and ten affected persons who had been identified as having an interest in sites on the long list. Representations were received from the appellant, the Municipality and five of the affected persons.

THE RECORD:

The record consists of four pages which appear to be related to work undertaken by the Municipality's engineering consultant in 1988. Three of the pages contain a list of sites that were considered for landfill use, and information as to their location, size, access, hydrogeological conditions, current (in 1988) investigation status, and other comments. The list includes the names of the owners or contact persons for the sites and, in some instances, addresses and/or telephone numbers of those persons. The fourth page is a map showing the locations of the sites. It is not clear from the face of the record whether it was prepared by the Municipality or its engineering consultant.

ISSUES:

The issues arising in this appeal are:

- A. Whether the mandatory exemption provided by section 10(1)(c) of the Act applies.
- B. Whether the discretionary exemption provided by section 11 of the Act applies.
- C. Whether the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.
- D. If the answer to Issue C is yes, whether the mandatory exemption provided by section 14 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the mandatory exemption provided by section 10(1)(c) of the Act applies.

Section 10(1)(c) of the Act states:

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,

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 section 10(1) 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]

Turning to part two of the test, having examined the record and the representations provided to me, I am satisfied that the information contained in the record was supplied to the City by the affected persons and, therefore, I find that the "supplied" aspect of part two of the test has been satisfied.

In regards to whether the information was supplied **in confidence**, part two of the test for exemption under section 10(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the affected persons had an expectation of confidentiality with respect to the information supplied to the Municipality. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

The Municipality submits:

... in a previous waste site selection process undertaken in 1988, the institution refused to assure individuals offering their property of confidentiality throughout the selection process. Ultimately, the short list of sites identified during that process was released for public comment. However, the long list of sites remains confidential to this day. Thus, while the site selection process requires public input and confidentiality cannot be continuously guaranteed, it is usually provided up to the point of public consultation. Such a degree of confidentiality could be anticipated by those offering their land for use as a waste site. Therefore, it is submitted that the information was implicitly, and in some cases explicitly, supplied in confidence to the institution, despite the fact that the confidential nature of the information would eventually be terminated as part of the site selection process.

Two of the affected persons who submitted representations state that they put forward their properties in confidence to the Municipality for consideration as potential landfill sites. One states that its offer was not made in confidence. One states that it has no objection to disclosure. The remaining affected person takes no position with respect to disclosure and makes no reference to the issue of confidentiality.

The Municipality, supported by some of the affected persons, is therefore stating that "temporary confidentiality" applies until the public consultation stage of the site selection process. The difficulty I have with this submission, however, is the paucity of evidence regarding the circumstances under which the "offer" of sites was made, and the site selection process being followed by the Municipality in 1988. The Municipality had made public in 1988 a report containing an evaluation of "Candidate Sites" which were considered to have potential for landfill use. These sites, however, are not included in the record, nor is there any other evidence indicating how the sites included in the record were obtained, or how the record relates to the Municipality's landfill site selection process. I do not, therefore, have sufficient evidence to conclude that the information was supplied in confidence, and I am of the opinion that part two of the test has not been satisfied.

To satisfy part three of the test, the Municipality and/or affected person must present evidence that is detailed and convincing, and must describe a set of facts and circumstances that would lead to a reasonable expectation that the harm described in section 10(1)(c) would occur if the information was disclosed.

The Municipality states in its representations that:

... the disclosure of the **location** of sites that were once potential landfill sites, or may become potential landfill sites again in the future, could reasonably be expected to result in undue loss to some persons and to undue gain to others.

[emphasis added]

...

It is submitted that the scope of "undue loss or gain" is broader than the scope of "undue financial benefit or loss" and can encompass losses and gains of a non-financial nature as well as those of a financial nature.

This position is echoed by two of the affected persons.

The elements of undue loss or gain cited by the Municipality are:

1. The public perception of landfill sites could affect the reputation and community status of the individuals who have offered their land for use as a site.
2. The identification of a particular community or site as an actual or potential landfill location can have a deleterious effect on community cohesion and result in damage or loss to the community's social cohesion.
3. The identification of a property as a potential landfill site can have a significant detrimental effect on the value of the property itself as well as that of neighbouring properties.

The Municipality acknowledges that these harms would have occurred in any event if the site selection process had continued and the sites been revealed at the public participation stage of the process. Its position, however, is that as the sites were identified in a document, produced in 1988, which has not been part of an ongoing site selection process and that, in any event, this process has been in abeyance since 1990 and may never be re-activated, there is no benefit in bringing these harms to pass unnecessarily.

I am of the opinion that the evidence submitted by the Municipality and by two of the affected persons does not satisfy part three of the test. The elements of undue loss or gain cited by the Municipality and the affected persons are not supported by evidence that is detailed and convincing.

As the Municipality has not satisfied all three parts of the test, section 10(1)(c) does not apply.

ISSUE B: Whether the discretionary exemption provided by section 11 of the Act applies.

The Municipality submits that sections 11(d) and (g) of the Act apply to the record. These sections state:
[IPC Order M-189/September 22, 1993]

A head may refuse to disclose a record that contains,

- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

Section 11(d)

The Municipality's position is that "unstructured disclosure"; i.e. disclosure that does not take place within the context of the intended public disclosure process, would cause it the following harms:

1. Strong negative reactions from persons owning land in the vicinity of the disclosed sites could reasonably be expected to have an effect on the willingness of the site owners to offer their land for sale to the Municipality.
2. Speculative activity involving potential sites could occur, thereby possibly affecting the Municipality's financial interests.

The evidence provided by the Municipality is not sufficiently detailed and convincing to demonstrate a reasonable expectation of harm. The Municipality has submitted journalistic evidence that persons living in the vicinity of proposed landfill sites express strong opposition to such proposals. In my view, however, the Municipality has not provided detailed and convincing evidence that the types of harm described above can reasonably be expected to occur if the list of potential landfill sites is disclosed. The Municipality has failed to make the necessary connection between the disclosure of the information contained in the records themselves and any specific responses to the disclosure of such information that could reasonably be expected to be injurious to its financial interests.

Additionally, the "harms" cited above would have occurred even under the Municipality's site selection process. The disclosure of site information during the public participation stage of the site selection process could be expected to cause the same harm, if any, as would be caused by disclosure at this time. The Municipality has not indicated in its representations how these "harms" would be avoided through the "structured public consultation process" it had intended to follow, and I find that section 11(d) does not apply.

Section 11(g)

In Order P-229, Commissioner Wright set out the following test:

In order to qualify for exemption under subsection [11(g)] of the Act, an institution must establish that a record:

1. contains information including proposed plans, policies or projects; and
2. that disclosure of the information could reasonably be expected to result in:
 - (i) premature disclosure of a pending policy decision, or
 - (ii) undue financial benefit or loss to a person.

Each element of this two part test must be satisfied for a record to qualify for exemption under this section.

The record contains recommendations as to whether or not further investigations should be conducted on each site, but there is no evidence that these recommendations of an engineering consultant constitute the "proposed plans, policies or projects of an institution". Similarly, there is no indication in the record or in the representations of any pending policy decisions that would be prematurely disclosed if the record was disclosed at this time. As discussed above, I am not satisfied on the evidence that disclosure would result in undue benefit or loss to a person, and I find that section 11(g) does not apply.

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

"Personal information" is defined in section 2(1) of the Act, in part, as follows:

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

...

- (d) the address, telephone number, fingerprints or blood type of the individual,

...

- (h) the individual's name where it appears with other personal information relating to the individual or where the

[IPC OrderM-189/September 22, 1993]

disclosure of the name would reveal other personal information about the individual;

I have examined the record. The three pages of property listings include the names of the owners or contacts for fourteen of the fifteen properties listed. Eleven of these listings include addresses and/or telephone numbers as well. Four of the owners or contacts are corporate entities, and three are municipalities, although six of these include the names of individual contacts. The representations indicate that one of the properties for which a named individual is listed as the contact is owned by a corporation.

Inquiry Officer Asfaw Seife stated in Order P-369 that:

The information severed from Record 6 relates to the names and titles of individuals acting in their professional or business capacities. Such information cannot be categorized as "**personal information**" as defined in section 2(1) of the Act.

I agree with Inquiry Officer Seife, and am therefore of the view that the names and titles of individuals, when given in conjunction with corporate or municipal names either in the record or the representations, are the names of individuals acting in their corporate or business capacity, and are not personal information.

In my view, the portions of the record containing names, addresses and telephone numbers of owners or contacts who are named individuals, and are not named in any corporate capacity, contain personal information that qualifies under the above-mentioned paragraphs of the definition of personal information, and relates to individuals other than the appellant.

The Municipality's position is that:

... the portions of the record ... that serve to identify the specific parcel of land that has been offered for use as a landfill site constitute personal information under the Act.

In support of this position, the Municipality relies solely on the definition of personal information as "recorded information about an identifiable individual".

The position of the Municipality appears to be that the fact that an individual has put forward his land for consideration as a landfill site is "recorded information about an identifiable individual", and is therefore that individual's personal information. The Municipality states in its representations that:

... the identification of the land would be sufficient to identify those persons who have submitted their offers to the institution and attests to the fact that the offer has been made by such individuals.

In Order 23, former Commissioner Sydney B. Linden considered a request for records identifying individual properties by their municipal addresses, and disclosing the estimated market value of each identified property. I consider this type of information to be directly analogous to that being sought in this appeal, namely the location of individual properties and technical analyses pertaining to them.

Former Commissioner Linden stated in Order 23 that:

In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the Act, which defines "personal information" as "...any recorded information about an identifiable individual...". In my view, the operative word in this definition is "about". The Concise Oxford Dictionary defines "about" as "in connection with or on the subject of". Is the information in question, i.e. the municipal location of a property and its estimated market value, **about** an identifiable individual? In my view, the answer is "no"; the information is **about a property** and not **about an identifiable individual**.

I agree with the position expressed by former Commissioner Linden.

One aspect of the Municipality's position is that disclosing the location and other information identifying the properties would enable the appellant, presumably through searches in the local assessment rolls and Registry Offices, to obtain the names of their owners. Former Commissioner Linden considered this issue also in Order 23, and stated:

The institution's argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of subparagraph (h) of the definition of "personal property". Subparagraph (h) provides that an individual's name becomes "personal information" where it "...appears with other personal information **relating to the individual** or where the disclosure of the name would reveal other information **about the individual**" (emphasis added). In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of property owners, and the release of these names was never at issue. However, even if the names were otherwise determined and added to the requested information, in my view, the individual's name could not be said to "appear with other personal information relating to the individual" or "reveal other personal information about the individual", and therefore subparagraph (h) would not apply in the circumstances of these appeals.

Once again, I am of the view that the circumstances of the two appeals are directly analogous, and I agree with the position expressed by former Commissioner Linden.

A second aspect of the Municipality's position is that disclosure of the identity of a property will, indirectly, lead to the disclosure of the fact that a named individual has offered the property to the Municipality. This

would appear to raise the potential application of subparagraph (b) of the definition of "personal property", which reads, in part, "information relating to ... **financial transactions** in which the individual has been involved". [emphasis added]

"Transaction" is defined in the Concise Oxford Dictionary as a "piece of commercial business done". In the circumstances of this appeal, however, there have been no financial transactions. The properties in question were offered to the Municipality for consideration for landfill use, but there is no evidence that the Municipality and the owners ever entered into negotiations relating to the purchase of one or more properties, nor that any such transactions were completed.

I am therefore of the opinion that the information contained in the record, other than the names, addresses and telephone numbers of the named individuals referred to above, is not personal information as defined in section 2(1) of the Act.

ISSUE D: If the answer to Issue C is yes, whether the mandatory exemption provided by section 14 of the Act applies.

The appellant states in her representations that:

... we did not ask for "personal" information of the kinds listed under the Act. We have not asked for personal names or addresses ...

I am therefore of the view that the names, addresses and telephone numbers of named individuals is not responsive to the request. As that information is the only portion of the record that I consider to be personal information, it is not necessary for me to deal further with Issue D.

ORDER:

1. I uphold the decision of the Municipality not to disclose the personal information of the individuals. I have included a highlighted copy of the record with the copy of this order sent to the Municipality, which identifies the information which should not be disclosed to the appellant.
2. I order the Municipality to disclose to the appellant the portions of the record which are **not** highlighted in the copy of the record which is being forwarded to the Municipality with this order within 35 days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with the provisions of this order, I order the Municipality to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2, **only** upon request.

Original signed by:
Holly Big Canoe
Inquiry Officer

September 22, 1993