



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-188**

**Appeal M-9200387**

**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/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

## BACKGROUND:

The Ministry of the Environment (now the Ministry of Environment and Energy) received a request under the Freedom of Information and Protection of Privacy Act for a range of documents relating to solid waste disposal proposals for Metropolitan Toronto. The Ministry transferred this request to the Municipality of Metropolitan Toronto (the Municipality), which then dealt with the request as one made under the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The Municipality disclosed to the requester all of the documents requested, except portions of a 1990 consultant's report identifying, describing and subjecting to technical analysis a "long list" of potential landfill sites. 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 fifteen 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 seven of the affected persons.

## THE RECORDS:

The records at issue are identified as Pages 154, 162, 163-64 (part), 165-69, 170-73 (part), 174-207, 208 (part), 209-10 and 211 (part). They fall into two categories:

1. those relating to a systematic site search within Metropolitan Toronto, which was conducted by the consultants and which resulted in the identification of three sites, identified as LM1, LM2 and LM3.
2. those relating to sites in the remainder of the Province which were offered by "willing hosts" in response to the Municipality's request for offers of potential landfill sites. These sites, identified as LH1 to LH27, were then analyzed by the consultants to determine their suitability for landfill purposes.

## 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 any of 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) 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)(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 (c) of section 10(1) will occur.

[Orders 36 and M-10]

Turning to part two of the test, having examined the records and the representations provided to me, I am satisfied that the information in the records was supplied to the Municipality by either the willing hosts or the consultants. The location of the sites and the fact that they are being offered for consideration by the

Municipality constitutes information supplied by the landowners. The descriptive and analytical information was compiled or created by the consultants, and supplied by them to the Municipality.

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:

... the institution explicitly stated to a number of landowners offering their land for sale that the landfill site selection process includes public consultation and input and, therefore, site offers could not remain confidential. However, although confidentiality throughout the process could not be provided by the institution, the long-term site selection process anticipated a structured disclosure of the sites as part of a formal public consultation process managed by the institution, with confidentiality prior to that structured disclosure. For the historical reasons set out above in Part II of these submissions, that disclosure never took place due to provincial intervention in the process. Therefore, the temporary period of confidentiality afforded to landowners who made offers subject to disclosure as part of the formal public consultation process has never actually ended.

... 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.

Three of the affected persons who submitted representations state that they offered their properties in confidence to the Municipality for consideration as potential landfill sites. One states that its offer was not made in confidence. The remaining three respondents, while objecting to disclosure, do not make specific reference to this issue.

The Municipality, supported by some of the affected persons, is therefore stating that "temporary confidentiality" applies until the occurrence of the "condition subsequent", the release of the consultant's report as part of the public involvement stage of the site selection process. As the condition subsequent has not occurred, confidentiality is to be maintained.

I believe that, in the circumstances of this appeal, the information contained in the records was supplied to the Municipality implicitly in confidence, **but with the understanding that confidentiality would be temporary only**, and that at a point in the site selection process the identity of **all** of the sites would be made public. The expectation at the time was that the disclosure would take place within the context of the

ongoing site selection process. As the Municipality states, however:

... the provincial government's announcement effectively terminated the institution's independent search for a suitable landfill site.

The circumstances in which the temporary confidentiality was offered no longer exist. In the absence of clear reasons why information provided in the context of a now terminated program should be held indefinitely, if not permanently, in confidence, 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:

... 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]

and that:

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.

It is therefore the Municipality's view that the disclosure of those records which would enable a person to locate a site identified in the long list would lead to the harm cited in section 10(1)(c) of the Act. This position is echoed by two of the affected persons.

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

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 these harms would have occurred through the release of the long list within the structured context of the site selection process. As the 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 and the affected persons have 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 records. These sections state:

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 Tom 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.

In my view, the records do not contain a proposed plan or policy. Rather, they are part of a draft report

containing technical analyses of a number of potential landfill sites. Similarly, there is no indication in the records or in the representations of any pending policy decisions that would be prematurely disclosed if the records were disclosed at this time. Accordingly, I find that section 11(g) does not apply.

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

The term "personal information" is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual ...". The Municipality relies solely on this portion of the definition, and does not cite any of the provisions of clauses (a) to (h) of the definition, in support of its position that the records constitute personal information.

As noted above, the information sought by the appellant is information identifying, describing and subjecting to technical analysis a "long list" of properties that were examined to determine their potential as landfill sites. The records do not contain the names and addresses of the property owners, nor of those persons, who may or may not own the "willing host" properties, who offered them for consideration by the Municipality.

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:

Although no name of a person is identified in the severed portions, 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 information" 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 records 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.**

As I have found that the information contained in the record is not personal information as defined in section 2(1) of the Act, Issue C is decided in the negative, and it is not necessary for me to consider Issue D.

**ORDER:**

1. I order the Municipality to disclose to the appellant Pages 154, 162, 163-64 (part), 165-69, 170-73 (part), 174-207, 208 (part), 209-10, 211 (part) within thirty five (35) days of 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 Municipality to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1, **only** upon request.

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

\_\_\_\_\_ September 22, 1993